SELECTIONS

FROM THE

RECORDS OF THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

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PAPERS

RELATING TO THE

DECCAN AGRICULTURISTS' RELIEF ACT

DURING THE YEARS

1875–94.

VOL. I.

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CONTENTS.

Papers relating to the Deccan Agriculturists' Relief Act during the years 1875—1894.

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PAPERS

RELATING TO THE

DECCAN AGRICULTURISTS' RELIEF ACT

DURING THE YEARS

1875-94.

From the Acting Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Home Department,—No. 3508, dated Poona, the 21st June 1875. No. 1.

I am desired by His Excellency the Governor in Council to forward, for the information of His Excellency the Viceroy in Council, copy of a despatch sent by this Government to the Secretary of State for India.

2. With reference to paragraph 7 I am directed by His Excellency the Governor in Council to solicit the sanction, by telegraph, of the Viceroy in Council to the nomination of an officer to conduct the important enquiry rendered necessary by the recent disturbances, for a period of three months on a monthly salary of R1,500, with a travelling allowance of R10 a day. As the matter is pressing, His Excellency the Governor in Council will be obliged if His Excellency the Viceroy will be good enough to direct a telegram to be sent sanctioning the nomination of the proposed officer on the salary and allowance mentioned above.

From the Government of Bombay, to Her Majesty's Principal Secretary of State for India in Council,—No. 8, dated Bombay Castle, the 21st June 1875.

We regret to be obliged to inform Your Lordship that some disturbances have occurred in the districts of this Presidency marginally noted.

Ahmednagar.
Poona.

2. The origin of these riots is curious, and the object of the rioters, though they were often distant from each other, appears to have been the same.

3. From reports received from the different district officers, it seems that large numbers of the cultivating and working classes in certain villages * of the districts before mentioned have risen against the money-lending classes, to whom they are as a body generally indebted. Your Lordship is of course fully aware that very many of the agriculturists of this Presidency are, whenever social festivities occur in their families, extremely improvident and extravagant. To meet the lavish expenditure which is then unfortunately so common, they usually have recourse, to the village money-lender and borrow from him at exhorbitant rates of interest the money which they require. This has been the custom from the time the country came into our hands, and it is no wonder, therefore, that the feeling of the village cultivator to the grasping village money-lender has always been one of greater or less hostility. Occasionally a very rapacious usurer has been murdered by an impoverished debter, rendered reckless by the trouble his own extravagance and the money-lender's rapacity have jointly brought upon him, and mutilations of money-lenders are unfortunately not unknown.

*45 Villages of Poona.
22 Villages of Ahmednagar.

4. The present, however, is the first occasion when large organised attacks by impoverished debtors seem to have been made on the village money lenders and traders. For it appears from reports which have been received that in the villages the money-lenders and traders were threatened and attacked by large bodies of their debtors, who forced them to surrender the bonds and other securities which they held. When these documents were quietly given up to the rioters they were at once destroyed, and when they were not given up quietly they were in many instances taken by force and then destroyed. A good deal of violence was used, and some of the trading classes have been injured. But so far we are glad to say no life has been lost, though it has been found necessary to call out the military to aid the police.

*

5. Up to the present time the number of prisoners taken amounts to about 875, and of these some have been sentenced to terms of rigorous imprisonment and some are still awaiting their trial.

6. Your Lordship may be assured that we will, as we have hitherto, put down with a very firm hand these daring breaches of the peace and we will insist on all prosecutions being rigorously conducted.

7. But we feel, on the other hand, that the circumstances which have caused this wide-spread feeling of dissatisfaction on the part of one body of men towards another, culminating as it has in disgraceful outrages, lie considerably below the surface, and we think they should be thoroughly and promptly investigated. We propose therefore to forward a copy of this despatch to the Government of India, and, with the sanction and concurrence of His Excellency the Viceroy in the Council, to select an officer in whom we have perfect confidence, whom we will at once send to the districts in question. We shall direct this officer to enquire most closely into the causes which have led to this lamentable state of things, and shall request the Chief Justice and Judges of the High Court of Judicature at Bombay to allow all the records of the Subordinate Judges in the disturbed districts to be open for investigation. This we deem to be necessary because it is believed by district officers of great experience that the action of our law-courts has really had a most important bearing on these recent occurrences.

8. As soon as the report has been received from the special officer whom we may select, we shall be in a position to determine whether any and, if so, what legislative action is necessary, and we will then lose no time in again addressing Your Lordship.

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3. Telegram from the Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay,—No. 994, dated Simla, the 1st July 1875.

Your letter dated 21st ultimo. Proposed deputation sanctioned. Order should be completely restored before any public enquiry. More by post.

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4. From ARTHUR HOWELL, Esq., Officiating Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay,—No. 995, dated Simla, the 1st July 1875.

I am directed to acknowledge your letter No. 3508, dated the 21st ultimo, with enclosure, on the subject of the recent disturbances in the districts of Ahmednagar and Poona, and in reply to say that the Governor in General Council is pleased to sanction the proposal to depute an officer for a period of three months for the purpose of investigating the causes of these disturbances and to give him a salary of R1,500 a month and travelling allowance at the rate of R10 a day. But His Excellency in Council is of opinion that before instituting any public enquiry, it is essential that complete order should be restored and the authority of the law maintained, so that the people may not have any reason to suppose that they have anything to gain by their lawless conduct.

2. Any general movement among the agricultural classes in India cannot but give cause for anxiety, and the Government of India should be kept informed from time to time of the state of the disturbed districts. The Government of India also wish to know if, in the opinion of the Bombay Government, the disturbances in question are in any way connected with the re-settlement of the land revenue and if the ryots have been acted upon by the agency of persons of higher position and education.

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5. From W. LEE-WARNER, Esq., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Officating Secretary to the Government of India, Home Department,—No. 7140, dated Bombay Castle, the 29th November 1875.

With reference to the correspondence ending with this Government letter No. 6142, dated the 18th ultimo, I am directed to forward herewith copy of a letter from Mr. J. B. Richey, dated the 21st ultimo, and to request that, under the circumstances therein stated, the Government of India may be moved to continue the Commission of Enquiry into agrarian disturbances in the Deccan for a further period of three months.

2. This Government has sanctioned the retention of the subordinate establishment attached to the Commission shown in the statement which accompanied my letter No. 5998, dated the 12th ultimo, and I am directed to report the sanction for the confirmation of the Government of India.

From J. B. RICHEY, Esq., on special duty at Poona, to the Chief Secretary to the Government of Bombay,—dated Matheran, the 21st October 1875. No. 6.

Referring to Government letter No. 4128 of 20th July, and accompaniments, I have the honour to solicit an extension of the period of three months for which I was deputed on special duty.

2. The appointment of Commissioners associated with me in this duty has naturally enlarged considerably the scope of enquiry and made a longer time necessary to deal with the subject exhaustively. It is to be expected that the appointment of a new Commissioner in the place of Mr. Colvin may, in some measure, cause delay in the completion of the labours of the Commission; and I would suggest that the members deputed by the Government of Bombay may be authorised to remain on special duty until further orders, as we are yet, in Mr. Carpenter's absence, hardly in a position to name a date for the conclusion of our duty.

From ARTHUR HOWELL, Esq., Officiating Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay, Judicial Department,—No. 11, dated Fort William, the 6th January 1876. No. 7.

With reference to your letter No. 7140, dated the 29th November last, I am directed to say that the Governor General in Council is pleased to sanction the continuance of the Commission of Enquiry into agrarian disturbances in the Deccan for a further period of three months. The proceedings of the Bombay Government authorizing the retention of the subordinate establishment are confirmed.

Office Memorandum from C. J. LYALL, Esq., Under Secretary to the Government of India, Department of Revenue, Agriculture and Commerce, to the Government of India, Home Department,—No. 67 (Land Revenue and Settlements), dated Fort William, the 30th January 1878. No. 8.

The undersigned is directed to forward copy of a letter from the Government of Bombay No. 6381, dated the 25th October last, together with a copy of the draft rules therein referred to, and to state that this Department concurs with His Excellency the Governor in Council in thinking that it would be expedient to extend the provisions of Section 320 of the new Code of Civil Procedure (Act X of 1877) to the four Collectorates of the Bombay Presidency therein named.

2. He is to add that, in the opinion of this Department, it will be most convenient if, as a portion of judicial business, this question is generally dealt with by the Home Department, the advice of this Department being sought when it is considered to be required.

From the Honourable E. W. RAVENSCROFT, C.S.I., Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Department of Revenue, Agriculture and Commerce,—No. 6381, dated Bombay Castle, the 25th October 1877. No. 9.

The Government of India are aware that the investigations of the Deccan Riots Commission of 1875 proved the existence of certain grievances on the part of the cultivating and land-holding classes in the Ahmednagar, Poona, Sholapur, and Satara Collectorates of the Bombay Presidency in respect of their indebtedness.

2. The grievances referred to are to a considerable extent mitigated by several of the provisions of the new Code of Civil Procedure (Act X of 1877). Amongst the provisions is Section 320, which enables this Government, with the sanction of His Excellency the Governor General in Council, to declare that in any local area the execution of decrees of any particular kind in which the sale of land is involved shall be transferred to the Collector of the district.

3. His Excellency the Governor in Council believes that this section will prove very beneficial to the ryots of the four Collectorates I have specified. Accordingly, I am desired to request you will be so good as to move the Government of India to accord their sanction to the section being declared in force in these four Collectorates.

4. At the same time, as it will be necessary to promulgate certain subsidiary rules under the section, I am desired to submit herewith, for the approval of the Government of India, a set of draft rules which, in the opinion of His Excellency the Governor in Council, will best meet the requirements of the case.

5. In conclusion I have to solicit the favour of an early reply.

DRAFT RULES.

10. In exercise of the power conferred by section 320 of the Code of Civil Procedure, the Governor in Council is pleased, with the sanction of the Governor General in Council, to declare that in the Districts of Poona, Sholapur, Ahmednagar, and Satara the execution of decrees shall, in the following cases, be transferred to the Collector (namely):

(1) Decrees for money in execution of which a court has ordered the sale of any immoveable property belonging to any person who earns his livelihood, either wholly or principally, by agriculture.

(2) Decrees ordering the sale of immoveable property belonging to any such person.

And in further exercise of the power conferred by the aforesaid section, the Governor in Council is pleased to prescribe the following rules for the transmission of the aforesaid decrees from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same; and for re-transmitting the said decrees from the Collector to the Court (namely):

1. It shall be the duty of the Court to which an application for the execution of a decree is made to ascertain, by any of the means provided by the Code of Civil Procedure for obtaining evidence that it deems fit to employ, whether such decree is one to which this notification applies.

2. If the Court shall be satisfied that the decree is one to which this notification applies, it shall cause a copy thereof to be forwarded by post, or in such other manner as shall be most convenient, to the Collector of the district in which such Court is situate.

3. Along with the said copy the Court shall send—

(*a*)—A copy of the judgment, if any, of the Court which passed the decree.

(*b*)—If the decree is that of an Appellate Court, a copy of the judgment of the Court which tried the suit originally, and when there has been a special or second appeal, of the judgment of the first Appellate Court.

(*c*)—A statement showing the extent, if any, to which the decree has been already executed, and clearly setting forth what portion of the decree still remains to be satisfied.

(*d*)—A copy of the application for execution of the decree.

4. The aforesaid documents shall be prepared and transmitted to the Collector, free of all cost, to the parties, the copies, etc., being prepared by the Court's establishment.

5. Previous to transmitting the decree to the Collector, the Court shall decide all questions between the parties as to limitation and any other objection to the execution of the decree; and should any such question or objection be raised after the decree has been transferred to the Collector, the Collector shall refer the parties to the Court, and, pending receipt of the final decision of the Court thereupon, shall continue such management of the property or other arrangements in respect of the execution of the decree, as shall have been already established, but shall make no new disposition or arrangement.

6. On receipt of the decree of the Court, the Collector may either proceed to execute it himself, or may refer it for execution, subject to his supervision and control, to any of his subordinates not lower in rank than a Máhálkari.

7. The Collector, or the officer to whom the Collector so refers the decree, shall without delay appoint a day for hearing any representations which the parties, or any of them, may desire to make as to the manner in which the decree should be executed; and shall cause a written notice to be served on each of the parties to the decree of the day so fixed, and shall also require the judgment-debtor to produce all title-deeds and other documents affecting the property in question which may be in his possession or power.

8. The Collector, or other officer aforesaid, may from time to time, by similar written notices, require the attendance of the parties to the decree, or any of them, for the purpose of ascertaining their wishes, or of obtaining any information which he may consider necessary to enable him to provide satisfactorily for the execution of the decree; and if any party does not attend, in pursuance of any such notice, the Collector, or other officer aforesaid, shall decide the matter in his absence, and he shall not afterwards be entitled to be heard with respect thereto.

9. Every such notice, and every notice which the Collector shall issue under Section 324 of the Code of Civil Procedure to the judgment-debtor or his representative, may be served in the manner in which notices issued by the Collector in his capacity as such are usually served, or by forwarding the same to the Court to be served upon the pleader, if any, of the party to whom such notice is addressed.

10. All orders which the Collector, or other officer aforesaid, shall pass in respect of the execution of the decree, or of the management or sale of the immoveable property of the judgment-debtor, shall be made in writing, and shall be dated and signed by him, and a diary of his proceedings shall be kept in the language of the district, in the Form B at page 148 of the Circulars of the High Court of Bombay.

11. Previous to proceeding to sell any property, the Collector, or other officer aforesaid, shall publish a notice in the language of the district calling upon all persons having rights in, or charges or claims on, the said property, or any part thereof, to submit on or before a date which shall be named in such notice, and which shall not be less than six weeks after the date of such notice, a statement of the right, charge, or interest claimed, and to produce the documents, if any, on which such claims are based.

Such notice shall be published in the manner prescribed for the notice to be issued by the Collector under Section 323 of the Code of Civil Procedure.

12. If, in the opinion of the Collector, or other officer aforesaid, any statement so produced as not sufficiently precise or clear, or if it shall appear to the Collector or such other officer that all the documents in the claimant's possession or power relating to the property to be sold have not been produced, he may refuse to receive such statement, and may give time for the production of a fresh statement, or not, as he deems fit.

The Collector, or other officer aforesaid, shall peruse the documents of title which any such claimant produces, but such documents shall not, without a special order, the reasons for which must be recorded, be handed for perusal to any other person than the Collector, or other officer aforesaid, and his clerk, reader, or interpreter, and they shall, after such perusal, be restored to the persons who have produced them with an endorsement signed by the Collector, or other officer aforesaid, on each of the dates on which, and the purpose for which, they were presented, and of the date of return and of the person to whom they are returned.

13. Every sale of property by the Collector, or other officer aforesaid, shall, except as is otherwise provided by the Code of Civil Procedure, be proclaimed and held subject to the same rules as are for the time being in force relating to the sale of immoveable property in realization of arrears of land revenue.

Every proclamation of any such sale shall contain, in addition, to the particulars required by the said rules,—

(*a*)—a list of all claims of which statements have been duly submitted and accepted by the Collector, or other officer aforesaid, under No. 12 of these rules, and which shall appear to the Collector, or such other officer, to be *primâ facie* honest and reasonable;

(*b*)—an intimation that the sale will extend only to the right, title and interest of the judgment-debtor or his representative; and

(*c*)—a caution that no guarantee is given either of the judgment-debtor's title or of the validity of any of the rights, charges, or interest claimed by third parties.

14. If at any time before a sale by public auction under the last rule has been finally confirmed, it shall appear to the Collector, or other officer aforesaid, that the property or any part thereof, sufficient to satisfy the decree, can be sold privately at a materially better price than the highest bid at the said auction, he may, instead of confirming such sale by auction, sell the property, or such part thereof, privately.

15. The Collector, or other officer aforesaid, shall retain the title-deeds and other documents produced by the judgment-debtor under Rule 7, and, if the whole of the property to which they relate is sold, shall hand them over to the purchaser.

16. When any sale has been finally completed, the Collector, or other officer aforesaid, shall give to the purchaser a certificate of sale as nearly as may be in the Form No. 150 of Schedule IV of the Code of Civil Procedure.

17. Delivery of the property sold will not be made to the purchaser by the Collector or other officer aforesaid. After the Court has been informed of the sale under Section 325 of the Code of Civil Procedure, the purchaser may apply to the Court for delivery.

18. When execution of the decree has been, as far as possible, completed, and the balance, if any, disposed of in accordance with the orders of the Court under Section 325 of the Code of Civil Procedure, the Collector shall re-transmit the papers received by him under Rules 2 and 3, together with the execution-proceedings, to the Court by post, or in such other manner as shall be most convenient.

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11. From C. BERNARD, Esq., Officiating Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay,—No. 1046, dated Simla, the 14th August 1878.

I am directed to acknowledge your letter* No. 6381, dated the 25th October 1877, reporting certain proposals of the Bombay Government with reference to the results of the investigations of the Deccan Riots Commission of 1875. Your letter requests sanction to the issue of a declaration, under Section 320 of the Civil Procedure Code, Act X of 1877, to the effect that the execution of decrees of the nature described in that section, involving the sale of any immoveable property (within certain districts) belonging to persons who earn their livelihood by agriculture, shall be transferred to the Collector of the district concerned. The Bombay Government also submit a set of draft rules which they propose to issue, under the authority vested in them by the second clause of the abovementioned section, regulating the transmission of the decree from the Court to the Collector, the procedure of the Collector and his subordinates in the execution of the same, and the return of the decree from the Collector to the Court.

* To the Department of Revenue, Agriculture and Commerce.
Reminder to the same Department, No. 434, dated 26th January 1878.

2. In reply, I am desired to say that the papers having been considered by the Government of India, certain verbal alterations have been suggested in the draft declaration proposed by the Bombay Government, *viz.*, the addition of the words "of Bombay" after the word "Governor" in the third line of the preamble, and the insertion of the phrase "in pursuance of a contract specifically affecting the same" after the word "property" in the second line of section 2. Agreeing in the propriety of the measure advocated by the Local Government, His Excellency the Governor General in Council is pleased to sanction the issue of the proposed declaration, subject to the alterations specified above. A copy of the declaration, as it will stand with these alterations, is enclosed.

3. I am directed at the same time to offer the following observations on the rules which the Government of Bombay wish to promulgate.

4. Section 320 of the Civil Procedure Code contemplates two kinds of decrees, namely, (*a*) decrees for money in execution of which the Court has ordered the sale of immoveable property; (*b*) decrees ordering the sale of immoveable property in pursuance of a contract affecting the same. Section 321 relates to both these kinds of decrees, while Sections 322, 323, and 324 relate only to the latter description. I am to observe that—

(1) Rule 1 might be omitted, as it does not seem necessary to repeat in the rules, what the law itself provides, or to enjoin upon the Courts the observance of such provision.

(2) The words "of the district in which such Court is situate" at the end of Rule 2 might also be omitted. The rules should apparently be framed exactly in accordance with the wording of the Civil Procedure Code, and not with a view to interpret or supplement that wording.

(3) At the end of clause (*d*) of Rule 3 should be added "and of the order (if any) made thereon for sale."

(4) Rule 5 would seem to be *ultra vires*. The law gives no power to frame rules for regulating the procedure of the Courts in respect to questions of limitation and to other objections.

(5) In Rule 6 for the words "decree of the Court" might be substituted "decree and of the other documents mentioned in Rule† 2."

† Present Rule 3.

(6) In Rule 13, for the words "subject to the same rules as are" might be substituted "in manner prescribed by the rules." The directions contained in this rule seem to follow the provisions of Section 287 of the Civil Procedure Code. But clauses (*b*) and (*c*) re-introduce certain portions of the old Procedure Code to which objections were taken, and which that section was expressly intended to supersede. These clauses ought, it is submitted, to be omitted.

(7) Section 14 does not seem to be quite in accordance with the law. The Civil Procedure Code can hardly be held to authorize the Collector himself to sell any part of the property by private sale: but he may, under Section 305 of the Code, allow the judgment-debtors to do so. It is suggested that the words "arrange under Section 305 for selling" be substituted for the word "sell" in the penultimate line of the draft rule.

(8) In lieu of the provisions of Rule 17, it has been suggested that it would be better to rule that the Collector shall always make delivery of the property sold. Presumably the law intends the Collector to *complete* the transaction.

5. In communicating the above remarks, I am to observe that it is for His Excellency the Governor in Council to decide how far they are to be adopted in the rules which he wishes to issue. A copy of them, as they would stand if these suggestions all commend themselves to His Excellency in Council, is enclosed.

Accompaniment to Home Department letter No. 1046, dated 14th August 1868, to the Government of Bombay. No. 12.

In exercise of the power conferred by Section 320 of the Code of Civil Procedure, the Governor of Bombay in Council is pleased, with the sanction of the Governor General in Council, to declare that in the Districts of Poona, Sholapur Ahmednagar and Satara, the execution of decrees shall, in the following cases, be transferred to the Collector (namely) :—

(1) Decrees for money in execution of which a Court has ordered the sale of any immoveable property belonging to any person who earns his livelihood, either wholly or principally, by agriculture.

(2) Decrees ordering the sale of immoveable property belonging to any such person, in pursuance of a contract specifically affecting the same.

DRAFT RULES.

No. 13.

And in further exercise of the power conferred by the aforesaid section, the Governor in Council is pleased to prescribe the following rules for the transmission of the aforesaid decrees from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the said decrees from the Collector to the Court, namely,—

1. If the Court shall be satisfied that the decree is one to which this notification applies, it shall cause a copy thereof to be forwarded to the Collector by post or in such other manner as shall be most convenient.

2. Along with the said copy the Court shall send—

(*a*) A copy of the judgment, if any, of the Court which passed the decree :

(*b*) If the decree is that of an Appellate Court, a copy of a judgment of the Court which tried the suit originally, and when there has been a special or second appeal, of the judgment of the first Appellate Court :

(*c*) A statement showing the extent, if any, to which the decree has been already executed, and clearly setting forth what portion of the decree still remains to be satisfied ;

(*d*) A copy of the application for execution of the decree, and of the order, if any, made thereon for sale.

3. The aforesaid documents shall be prepared and transmitted to the Collector, free of all cost to the parties ; the copies, etc., being prepared by the Court's establishment.

4. On receipt of the decree and of the other documents mentioned in Rule 2, the Collector may either proceed to execute it himself, or may refer it for execution, subject to his supervision and control, to any of his subordinates not lower in rank than a Mahalkari.

5. The Collector or the officer to whom the Collector so refers the decree, shall, without delay, appoint a day for hearing any representations which the parties or any of them may desire to make as to the manner in which the decree should be executed, and shall cause a written notice to be served on each of the parties to the decree of the day so fixed, and shall also require the judgment-debtor to produce all title-deeds and other documents affecting the property in question which may be in his possession or power ; and shall after such enquiry, as he considers necessary, proceed in some one of the methods prescribed by Section 322 of the Civil Procedure Code.

6. The Collector or other officer aforesaid may, from time to time, by similar written notices, require the attendance of the parties to the decree, or any of them, for the purpose of ascertaining their wishes, or

obtaining any information which he may consider necessary to enable him to provide satisfactorily for the execution of the decree; and if any party does not attend in pursuance of any such notice, the Collector, or other officer aforesaid, shall decide the matter in his absence, and he shall not afterwards be entitled to be heard with respect thereto.

7. Every such notice, and every notice which the Collector shall issue under Section 324 of the Code of Civil Procedure to the judgment-debtor or his representative, may be served, in the manner in which notices issued by the Collector in his capacity as such are usually served or by forwarding the same to the Court to be served upon the pleader, if any, of the party to whom such notice is addressed.

8. All orders which the Collector or other officer aforesaid shall pass in respect of the execution of the decree, or of the management or sale of the immoveable property of the judgment-debtor, shall be made in writing, and shall be dated and signed by him, and a diary of his proceedings shall be kept in the language of the district, in the Form B at page 143 of the Circulars of the High Court of Bombay.

9. Previous to proceeding to sell any property, the Collector, or other officer aforesaid, shall publish a notice in the language of the district, calling upon all persons having rights in, or charges or claims on, the said property, or any part thereof, to submit on or before a date, which shall be named in such notice, and which shall not be less than six weeks after the date of such notice, a statement of the right, charge or interest claimed, and to produce the documents, if any, on which such claims are based.

Such notice shall be published in the manner prescribed for the notice to be issued by the Collector under Section 323 of the Code of Civil Procedure.

10. If in the opinion of the Collector or other officer aforesaid any statement so produced is not sufficiently precise or clear, or if it shall appear to the Collector or such other officer that all the documents in the claimant's possession or power, relating to the property to be sold, have not been produced, he may refuse to receive such statement, and may give or may not give, as he deems fit, time for the production of a fresh statement.

The Collector or other officer aforesaid shall peruse the documents of title which any such claimant produces, but such documents shall not, without a special order, the reasons for which must be recorded, be handed for perusal to any other person than the Collector or other officer aforesaid, and his clerk, reader or interpreter, and they shall, after such perusal, be restored to the persons who have produced them, with an endorsement signed by the Collector, or other officer aforesaid, on each, of the date on which and the purpose for which they were presented, and of the date of return and of the person to whom they are returned.

11. Every sale of property by the Collector or other officer aforesad shall, except as is otherwise provided by the Code of Civil Procedure, be proclaimed and held in the manner prescribed by the rules for the time being in force relating to the sale of immoveable property in realization of arrears of land revenue.

12. If at any time before a sale by public auction under the last rule has been finally confirmed, it shall appear to the Collector, or other officer aforesaid, that the property or any part thereof, sufficient to satisfy the decree, can be sold privately at a materially better price than the highest bid at the said auction, he may, instead of confirming such sale by auction, arrange under Section 305 for selling the property, or such part thereof privately.

13. The Collector or other officer aforesaid shall retain the title-deeds and other documents produced by the judgment-debtor under Rule 5, and if the whole of the property to which they relate is sold, shall hand them over to the purchaser.

14. When any sale has been finally completed, the Collector, or other officer aforesaid, shall give to the purchaser a certificate of sale, as nearly as may be, in the Form No. 150 of Schedule IV of the Code of Civil Procedure.

15. When the property sold is in the occupancy of the judgment-debtor, or of any other person, and a certificate in respect thereof has been granted under the last preceding rule, the Collector, or other officer aforesaid, shall, on application by the purchaser, order delivery to be made by putting purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, by proclaiming to the occupant by beat of drum, or in such other manner as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser, and, if need be, by removing any person who refuses to vacate the same.

16. When execution of the decree has been, as far as possible, completed, and the balance, if any, of the sale-proceeds disposed of in accordance with the provisions of Section 325 of the Code of Civil Procedure, the Collector shall re-transmit the papers received by him under Rules 1 and 2, together with the execution proceedings, to the Court by post, or in such other manner as shall be most convenient.

From the Honourable E. W. RAVENSCROFT, C.S.I., Chief Secretary to the Government of Bombay, to the Secretary to the Government of India, Department of Revenue, Agriculture and Commerce,—No. 2202, dated Bombay Castle, the 6th April 1877.

With my letter No. 3011, dated 20th May 1876, I had the honour, by direction of his Excellency the Governor in Council, to transmit to the Government of India seven copies of the report* of the Commission which was appointed to investigate the causes of the rayats which

* Published separately.

occurred during 1875 in the Poona and Ahmednagar Collectorates, together with its appendices marked A to C, and two separate papers* recorded by Messrs. Colvin and Shambhuprasad Lakshmilal. A similar number of copies of the volume containing the Minutes recorded by the Commission, together with other papers which were not received with the report, were also forwarded on the 11th July 1876. I am now directed to submit the views of this Government.

2. The subject-matter of these papers divides itself into the following heads:—

1.—The nature and extent of the rayats themselves, and what was their immediate cause.

2.—The extent to which defects, if any, in revenue administration led to the riots, and whether any improvement in the system is required.

3.—The state of the existing law relating to debt and the action of civil courts.

The nature and extent of the riots themselves, and what was their immediate cause.

Nature and extent of the riots.

3. The riots commenced on the 12th May 1875. The object was in every case to obtain by force and destroy the bonds for money given by the cultivators to the village bankers. Actual disturbances took place in 11 villages in the Poona, and 22 villages in the Ahmednagar Collectorate. Threatened riots were arrested by the police in many other villages. The outbreak was over in about a month; but two cases happened afterwards in the Poona District, and another in a village of the Satara Collectorate, 100 miles away from the affected tract, which showed that the feelings which had led to the riots were neither extinct, nor were they confined to Poona and Ahmednagar alone. The number of persons arrested was 951, of whom 501 were convicted. The absence of serious crime is a very remarkable feature in the outbreak. In many cases where the money-lenders themselves at the ryots' demand tore up their bonds, no further harm was done, and ferocity was shown in only one case where an attempt was made to burn a money-lender alive. Even in that instance, too, certain of the rioters themselves saved the banker's life.

Causes which led to the riots.

4. It is clear that the feeling of hostility between the ryots and their creditors, which found open expression in the riots, had been increasing in strength for some time. Indeed, had it not been for a transient period of prosperity, the crisis which has occurred would have happened long ago. The affected districts are poor, and in places sterile, and suffer much from scanty and precarious nature of the rainfall. The ryots themselves, a hardy and in many ways frugal race, have from the earliest time suffered from a load of ancestral debt, which they never think of repudiating, and is one of the main causes of their constant poverty. Devoid of education, and not possessed of much intelligence the system of collecting the land revenue at fixed times and in fixed sums in cash necessitates constant recourse to the villiage banker for sums of ready money against which is set the price of the produce sold to him. The social obligations which compel the expenditure of comparatively large sums at marriages and funerals also involve borrowing at very high rates of interest; and partly from the ryot's own carelessness about repayment, partly from the hardness and even fraud of the money-lender, small debts rapidly increase to large, so that once involved in debt a ryot is powerless to extricate himself. Formerly land in the Deccan was not the property of the ryot, and the ryot's credit was limited. The money-lender, therefore, advanced money with a stinted hand, and for some years after the conquest of the Deccan in 1818 seldom thought of having recourse to the civil courts to recover his debts, but was contented with taking all the ryot's produce, and leaving him only the bare necessaries of life. This state of things attracted attention as early as 1822, and from time to time the misery of the ryots and the danger of it to the State was represented to Government. From 1836-37, however, the land began to be settled on terms which gave the ryots a proprietary title in it. Soon finding the value of this, they began to borrow money upon it, thus to live on their capital. At first the power of selling the land for money debts—a power unknown to Native governments, and foreign to the feelings of the people—was not exercised by the money-lenders. As soon, however, as the system of civil justice, introduced by the British, began to be better understood, and the ryots were getting to the end of their capital, suits became more frequent, and the people became familiar with sale of land for debt. Serious difficulties were foreseen; but the mortgaging of the land proceeded slowly, and about 1850 a period of good fortune dawned. The railway works were commenced, vast numbers of labourers were employed, and a great amount of money was spent amongst the ryots.

The ryot.

His original depression.

Period of prosperity, 1850 to 1866.

Then came the American War, which diverted many millions of money to the Deccan to buy cotton. Prices of agricultural produce were greatly inflated, and the ryot's income was raised to an amount unconceived of before. Just about the same time a series of very extensive public works were commenced in Poona and the neighbourhood, which gave employment to those who needed it, and added to the money floating about the country. There is every reason to believe that at this time the ryots cleared off much of their former debts, but at the same time they learnt more expensive habits of living. From 1866 the tide of prosperity began to ebb. In 1866-67 the country suffered from severe drought, and in 1867-68 there was also a partial failure of crops. From 1870-71 the expenditure on public works was greatly reduced, and in that year prices, which had maintained themselves for some time after the cessation of the American War, began to fall steadily, till in 1875 an amount of grain could be bought for four annas which a rupee would hardly have purchased five years before. From 1867 the settlements of land revenue, made thirty years before, began to fall in, and the revision which took place in some of the disturbed talukas resulted in a considerable increase of the Government assessment. Population in the meantime had been increasing steadily, and its pressure on the land was much greater than it had been when the first settlements were made, and that in a part of the country where, considering the nature of the soil, the holdings are small, the average area per head of agricultural population ranging from 3 to 9 acres. All these circumstances contributed to contract the ryot's means, while it is possible they did not contract in the same proportion the more costly mode of living which high prices had justified. Again their debts began to accumulate, and they commenced mortgaging their lands more deeply than before.

Second period of depression.

Such of the sowkars, and there are many, as come from other parts of India are hard, destitute of sympathy, and desirous of increasing their debtors' obligations in any manner possible. Their opportunity of enhancing their bond debts was much facilitated by a change in the Limitation Law which was made in 1859, putting an end to the old-fashioned, long-running accounts, and necessitating renewal of bonds at exorbitant rates every two years, or three years at the outside. As the ryots began to become once more deeply involved, the sowkars began to press upon them. The result was that the mass of the people again become *quasi*-slaves, having to surrender all their produce to the sowkars, and receiving from them only enough grain to live upon, as well as small sums of money which served to increase their debts. In some places the sowkars had recourse to the civil courts, and began to sell up the lands, which, as they were the only capitalists in the country, as well as for other reasons, were bought in by themselves for a mere song. These reverses naturally engendered discontent in the mind of the ryots, and discontent gradually ripened into hatred.

The sowkars.

Evidence of the growing ill-feeling is shown by a number of outrages, where money-lenders were the victims, which occurred in the districts of Poona and Ahmednagar during the last three or four years, and by acts of open hostility, such as agreeing to deprive the Marwaries of the usual services which the various members of the village community render to one another, and molesting them in various disagreeable ways. What the actual cause of the outbreak was will never be known. It appears, indeed, that one special cause of hatred was given by the sowkars a month or two before the disturbances began. Government issued an order in February 1875 that moveable property should be sold before immoveable for arrears of revenue; in other words, that the selling up of a man's field should take place only in the last resort. One effect of this order was to protect the ryot's field, which was the sowkar's security, from being sold by Government as long as the ryot had any moveable property to seize. The sowkars, therefore, knowing their security was safe, took advantage of the order to refuse advancing the second instalment of revenue for March 1875, although they had received all the produce of the fields. This must have exasperated the ryots beyond measure. It is probable, therefore, that when, as is stated to be the fact, the rumour spread that Government was enquiring into the ryots' circumstances, and that Her Majesty had ordered the sowkars to give up their bonds, the ryots eagerly seized the pretext for taking the law into their own hands. But the precise manner in which the fire was kindled is immaterial. The ryots are an especially quiet, law-loving race, and the causes to be proved are those which led to their inflammable condition, and not to the mere spark which began the conflagration. It may be noted, however, that there is no evidence to show that the ryots were urged to their excesses by persons of higher position and education, though they had the sympathy of many such.

Supposed immediate causes of the outbreak.

The extent to which defects, if any, in the revenue administration led to the riots, and whether any improvement in system is required.

Revision of assessments did not contribute to the riots.

5. The first and most important point to be considered under this head is whether or not the revision of the assessment directly or indirectly led to the riots. The Commissioners as a body are silent on the subject, but Government agree with Mr. Richey, the President, and Mr. Shambhuprasad, in considering that there is no reason to believe this to have been the case. The enhancement of the assessment was a mere trifle compared with the loss caused by the fall in prices. The talukas in Ahmednagar, where so many riots occurred, have not been re-assessed, and the assessment will not be revised in any of them for three or four years to come. In the four talukas of Sholapur which adjoin the affected districts, and which have been re-assessed, no attempts at disturbance were made The taluka of Bhimthari, where six cases occurred, was revised three years before the outbreak. In that of Indapur, which was revised seven years before, there was only one case. Not only were the villages where riots took place not those which had been most highly re-assessed, but the hostile movement against the sowkars commenced in a village which has not been re-assessed at all. Government believe, therefore, with Mr. Richey that the movement was directed solely against the sowkars, and that there was no further connection between the riots and the revision of assessment than that in individual instances the revised assessment may have been one, and that a small one, of the many causes which contributed to render a particular ryot's position intolerable.

Minutes of Messrs. Carpenter and Colvin.

6. Much discussion has, however, as the papers show, gone on as to the principles on which the revisions of assessment have taken place, and endeavours have been made to show that the new assessment, even though subsequently reduced, has been too highly pitched. The only papers which, in the opinion of Government, require remarks are the able Minutes of Messrs. Carpenter and Colvin. Briefly put, Mr. Carpenter argues that the revisions in certain talukas were based on prices which were not a safe guide, and which obtained in a period when the assessment was not paid with ease, and cultivation had not reached its fullest extent; that no allowance was made for the increased standard of comfort which the ryots had attained during the currency of the late settlement, and which it is the object of Government to maintain; that the enhancement has been unequally distributed, and should in all cases have been lighter on land brought under the plough during the settlement than on land continuously cultivated; that the system of classification of soils was faulty, in that sufficient difference was not allowed between the best sorts and the worst. Mr. Colvin also, comparing the enhancements as carried out with those of the North-Western Provinces, is of opinion that they are excessive, and that sufficient importance has not been attached to the growth of the population pressing on in a limited area, and to the admitted low and poor state of the population.

Principles of revisions of settlements.

7. While His Excellency in Council must acknowledge the acuteness and justice of many of the criticisms which have been made, and which cannot fail to be of value to all Survey officers, he does not feel himself called on to follow Messrs. Carpenter and Colvin through the details of their calculations and the conclusions they have educed. Settlements, whether original or revised, are matters requiring practical experience and knowledge of the country, and too great a reliance on figures and statistical tables is very apt to mislead. In the Bombay Presidency, as observed by Mr. Carpenter, data for ascertaining the true rent of land do not and, His Excellency would add, cannot exist. In revising the assessment, therefore, the precautions taken are to see that the soils be accurately valued, that the fields be accurately classed according to fertility and position, and that the villages be properly grouped. After this, the fixing of the maximum rates depends on a variety of considerations. The improvements which have been made in communication and in water-supply, the comparative wealth or poverty of the people, climate, the general fertility or sterility of the district, the ruling and probable future prices of agricultural produce, the benefits derived from the opening of new markets for the same, are only some of the matters which have to be borne in mind while the values of but few can be expressed in the form of tabular statements. Experience, therefore, and the analogy of other talukas and districts must be the Settlement Officer's guide in assigning their true weight to these various elements, so that he can fix an amount of assessment which it is not only just to Government to impose, but which will be easy for the people to pay. During this process allowances are always made to prevent encroachment on the increased standard of comfort which the people have reached, and to the continuance of

which, as being the only evidence of true progress, the Government attach the greatest importance. It is thus quite possible that a revision may result in no increase at all, or even in the assessment being lightened.

8. As regards the revisions of assessment which have of late years been carried out in the Poona and Sholapur Collectorates, His Excellency some time ago came to the conclusion that one factor on which the revisions were based, *viz.*, the prices of grain, had been over-estimated, and also that in revising the classification of fields (which was necessary owing to the faultiness of the early work of the Settlement Department), the medium and poorer soils had been valued at too high a scale. His Excellency in Council, therefore, lost no time in carrying out such reductions of assessment as were necessary. To prevent, moreover, for the future, increases which might bear with hardship on individual cultivators or villages, he laid down that without the sanction of Government no increase should exceed—

Precautions already taken against over-assessment at revisions.

in the case of an individual, 100 per cent.,

in the case of a single village, 66 per cent., and

in the case of a single group of villages or of a single taluka, 33 per cent.

His Excellency in Council hopes that these orders will prove sufficient to prevent any hardship in future, and that no further change in the mode of carrying out revisions will be necessary. The Government of India are already aware that the re classification of soils, which has been a chief cause of irritation, will not be undertaken again except where the original work is so erroneous, that is, so fraught with injustice, to the great body of cultivators or to the State, that it is absolutely necessary to go over it again.

9. The Commissioners recommend that in future when an increase of revenue exceeding 25 per cent. is imposed at a revision, this increase should be imposed gradually; but they have not stated the detailed way in which they think this suggestion should be carried out. On the whole, His Excellency in Council is not inclined to view the proposal with favour. The revenue, as imposed in this Presidency, is never more than the people should be able to pay with ease, even in the first years, after a revision, and there are many administrative objections to a change, not the least of which is the fraud to which the ryots would be liable, and which is now prevented owing to the demand on them being invariable. In poor talukas, where it is possible that a difficulty may be felt by the people at first, the increase is never likely to exceed 33 per cent., and this is an amount but little beyond that which has been fixed by the Commission.

Government dissent from Commission's proposal to levy increased assessment gradually,

10. The rigid revenue system of this Government is alluded to, and the Commission observe that both Government and the ryots suffer by the fixing of the revenue at a certain sum, whatever the state of the season may be, and adding that, as Government has to give remissions in very bad seasons, it should share the profit in good seasons. His Excellency in Council, however, believes that it would not be possible to introduce "a more elastic system than "the present, which should be governed by fixed principles, and avoid haphazard remissions," "or that the revenue could be fixed according to the quantity or timeliness of the rainfall." Any step which would render the ryots' payment variable would re-introduce that element of uncertainty and gambling so dear to all Natives, and be a pernicious and very retrograde measure. The ryot himself would not like it in the good years, as he would, under the system indicated, have to pay more heavily than at present. When assessing districts liable to drought, such as the Commission have in their mind, great care is taken to make allowances for bad seasons. And though the giving of remissions in the worst seasons is an evil, still it is preferable to the uncertainty, and, Government may add, fraud which would follow the changing of the assessment every year according to the rainfall, which often varies in different parts of the same taluka. The old system of taking rent in kind would be the only effectual way to avoid the evil the Committee speak of, if it really be an evil, and this reversal of the policy of the past the Government are not prepared to recommend, although they can well conceive that the sowkars' power of oppression might thus be materially reduced.

or to alter the assessment according to the nature of the season.

11. The Commissioners suggest an improvement in the rules under the Land Improvement Act. His Excellency in Council, however, could not assent to altering them in the sense of making loans easily available to ryots for purposes other than improvements; on the contrary, he concurs in the opinion, which the Commission have expressed in another place, that the State

Improved rules under Land Improvement Act.

Government cannot lend money in place of the sowkar.

should, in this Presidency at least, make no attempt to take the place of the village banker. In times of great distress, to aid in the reclamation of a deserted village, or for other special reasons, "takavi" is granted, and this His Excellency in Council considers all that is at present required. The question as to the best mode of bringing loans for agricultural improvements still more within the reach of the ryots than at present is now under consideration, and the result of His Excellency's inquiries will be duly communicated to the Government of India. It may be observed, however that as long as the population consists of small land-holders, most of whom are steeped in debt, there is little probability of the advantages of the Act being utilized much more than at present.

12. For the reasons stated, then, His Excellency in Council is not prepared to alter the revenue system of the country. He believes that it has had no appreciable effect on the ryot's fortunes, and that any change would be very much for the worse. Yet it is perfectly plain that the state of the ryots is in a most unsatisfactory condition. A persual of the report will show that, for a long time past, the indebtedness of the Deccan ryots has formed the theme of remonstrances against the law on the part of various eminent officers, such as the late Lord Elphinstone and Sir George Wingate; and, as has been said in paragraph 4, it is evident that, had it not been for the period of exceptional prosperity which ended with 1870, the present deplorable state of things would have come long ago. It is true that the boon of light and equitable rates of assessment and the conferring of a proprietary title on all holders of land—a title the value of which has only been appreciated in the last twenty years—gave a great impetus to cultivation, and placed the ryot in a far better position than ever he was before. But he commenced with a load of ancestral debt. The valuable property which was given him at the survey has been or is being squandered, and he is now worse off than on any one of the various occasions during the last forty years when the matter of his indebtedness has been represented to Government. Formerly when he had no title in the soil he practically was not ejected for debt. But now this is possible under the present law. And although the money-lender who sells him up usually allows him to remain on what was once his land, as a wretched rack-rented tenant, still he has lost the magic of property, and is little better than a serf. The money-lender who obtains the ownership of the land is usually a stranger, a hard and unsympathetic landlord, grasping all he can secure for himself, and expending no capital whatever on the land. Even though only a small portion of the land has actually undergone formal transfer to the money-lenders, still there is evidence to show that some sowkars have increased their holdings largely of late years; and from inquiries made in certain villages selected for the purpose it appears that about one-third of the ryots are hopelessly involved and lie practically at the mercy of the sowkars. The registration and civil court returns, too, show that the mortgaging and sale of fields has increased much of late years—that ruin is proceeding apace, which, if not arrested, will soon overtake the great body of the ryots. It cannot but be a matter of the greatest regret that this should be the end of all that Government have done for the ryots, and undoubtedly, if the law unduly conduces to this sad state of things, the law requires alteration.

13. For the purpose of considering what changes in the law are required, it will be convenient to enumerate the circumstances which attend an ordinary ryot's downfall from the commencement, and to see in what respects his position can be improved at the various stages of difficulty which impede his career. These stages may be divided into the following:

I.—Difficulties of the ryot before he is taken into court.

II.—While he is in court.

III.—After a decree has been passed against him.

Alleged disadvantages of the ryot.

I.—Difficulties of the ryot before he is taken into court.

To begin with, the ryot is poor. This is an evil which no Government can cure, and all they can do is to make sure that his poverty is not enhanced by oppressive taxation. This is already done.

Poverty.

2. The ryot is ignorant. The remedy for this is to be found in the gradual extension of education. The utmost that lies in the power of Government in the meantime is to see that his ignorance is not made a vehicle for fraud on the part of others, and that, as far as circumstances admit, it is not allowed to work to his disadvantage when he is brought into court.

Ignorance.

Extravagance.

3. The ryot is said to be extravagant. This accusation the Commission show is to a great extent unfounded. Undoubtedly amongst the mass of the ryots, as amongst any other community, actual imprudence and extravagance are to be frequently observed, and the liability for the ultimate re-payment of what they borrow has little weight with them. Expenditure, too, which was justifiable during the high profits of the American War, has perhaps not been reduced as times grew harder. Government, however, can by no direct action put a stop to extravagance. Expenditure on marriage festivals, for instance, is necessitated by the ryots' own social laws, and is by no means all money thrown away. Nor, on the other hand, is such expenditure so excessive that active measures, such as have been taken in regard to the Rajputs who murder their daughters, could be adopted to reduce it.

Ancestral debt.

4. The ryot is burdened with ancestral debt. Government can do nothing to relieve this, and they concur with the Commission in thinking that they should not be too ready to encourage him to disregard the religious duty, which Hindus cheerfully accept, of paying their fathers' debts, and which is one of the best traits in their character. Only when he is so desparately involved as to be beyond hope of extrication, he should be given the benefit of an insolvent law (*vide infra*, clause 19.)

Usurious interest.

5. The ryots' bonds usually run at usurious interest, or what would be usurious interest in England. Here, again, Government are helpless. They are satisfied that no usury law would be of the slightest use, and that the grant of discretionary powers to courts to reduce the rate of interest (which, as the Commission observe, is only another form of usury law) would be useless. Cases undoubtedly are of very frequent occurrence amongst the more unintelligent classes of Kunbis, Bhils, and aboriginal tribes where the excessive amount of interest exacted really amounts to fraud and oppression. The High Court of Bombay, however, has decided that "inadequacy of consideration when found in conjunction with any other such circumstances as suppression of true value of property, misrepresentation, fraud, surprise, oppression, urgent necessity for money, weakness of understanding, or even ignorance, is an ingredient which weighs powerfully with a Court of Equity in considering whether it should set aside contracts, or refuse to decree specific performance of them." The High Court has pointed out to the Government that the wide scope of this ruling is binding on all ordinary courts. If, then, the High Court and District Courts will see, as doubtless they will take care to do, that this ruling is acted up to, it would be useless to ask for anything more.

High Court's decision as to inequitable contracts.

Fraud on the part of money-lenders.

6. At every stage of his money-dealing the ryot is defrauded by the sowkars, and especially by the low class of sowkars which has sprung up in the last generation. It may be taken as proved that the latter often declines to give accounts, refuses receipts, omits to give credit for payments or interest on payments, and declines to carry out his own stipulations in the bond.* Actual forgery, moreover, is sometimes resorted to, and the ryot from ignorance is unable to prevent his creditor from taking advantage of these nefarious practices. To remedy this the Commission propose a system, of which the following are the main features :—

Commission's proposals to prevent fraud, approved.

I.—All bonds shall be executed by notaries public, who will record whether consideration was passed or not in their presence.

II.—The ryot shall be entitled to receive a statement of his account at every year.

III.—Receipts to be given for every payment under bonds, and payments to be endorsed on the bond.

IV.—Ryots to be given pass-books.

His Excellency in Council considers that these proposals are well considered, and should be adopted. Not only will frauds be prevented, but the ryot's pecuniary condition will be forcibly brought under his own eyes from time to time. This of itself, it may be hoped, will tend to make him more prudent than he is at present.

It is to be noted that the present state of the law is having its natural result on the ryot also, who is rapidly becoming demoralized, and given to tender false pleas and deny genuine

* At the end of Mr. Shambhuprasad's Minute (page 82) an abstract of 29 original ryots' accounts, extracted from sowkars' books, is given, some of the accounts having run for a very long series of years. The result is that out of Rs. 10,365 advanced, on which interest amounted to Rs. 8,561, only Rs. 9,759 in all were repaid. This points clearly to falsifying of accounts, as the sowkars could not carry on business like this at a heavy loss.

obligations, and the measures proposed will have a good effect on him as well as on his creditor. The hereditary village writers will naturally be the notaries public, and will have the people's confidence. If notaries be appointed in sufficient numbers, there is no reason to fear that the system will not work well. The only objection is that it may make it more difficult for the ryots to raise money, but this will only be at first, and ought not, in the opinion of Government, to stand in the way of the scheme. Government propose, therefore, that a Bill be introduced to carry out the Commissioners' proposals at an early date.

Hardship caused by the Limitation Act.

7. Another way in which the ryot suffers is by the reduction, under the Act of 1859, of the time during which money bonds are current to the small period of three years. The Commissioners have carefully considered this question, and have come to the conclusion that, in the case of bonnds entered into before a notary, the period of limitation should be six years. Mr. Shambhuprasad, indeed, thinks that the old period of twelve years should be reverted to There is a vast consensus of opinion that the new law has affected the relations of creditor and debtor in the following way, *viz.*, that whereas formerly an account was allowed to run on for twelve years on simple interest, now-a-days a new bond must be entered into every three years, and the interest being added up and a new account struck, the amount of compound interest is swelled eventually to a very large sum.* In addition to the compound interest, however, the creditor usually, it appears, takes the opportunity of renewing a bond to extort fresh and burdensome stipulations under threats of suing his debtor in court, all of which add to the total of the debt. His Excellency in Council concurs in thinking that, advisable in theory though it be that accounts should be struck and debtors forced to come to term in a reasonably short time, still in a country where the majority of borrowers depend on a rather precarious rainfall, and where it has been the ancient custom to allow accounts to run on for an indefinite period, the time had not arrived in 1859, nor has it arrived at present, for restricting the period of limitation to three years. He concurs with Mr. Shambhuprasad that the twelve years' period should be reverted to, and he earnestly trusts, therefore, that his Excellency the Governor General in Council will be pleased to make the necessary alteration in the law as soon as possible.

Alteration to six years proposed.

Difficulties while the ryot is in court.

II.—*Difficulties while the ryot is in court.*

Fraudulent non-service of summons.

8. When the ryot is sued in court he is, it has often been alleged, met with fraud at the outset, in that the service of a summons upon him is wilfully withheld by collusion between the creditor and the subordinates of the court; and the court being told that the summons has been served, gives a decree against him *ex-parte*. There seems, from the evidence recorded by the Commission, much reason to believe that this is frequently the case, and the enormous proportion of *ex-parte* decrees passed in the Bombay Presidency, when compared with other Provinces, lends colour to the statement. There is no doubt, as the Commission state, that in the majority of cases the reason for the defendant's non-appearance is that he has no defence to make, or that he has no money to pay for a pleader, or that he is unwilling to lose the time involved in defending a suit, or that he is afraid of the subsequent vengeance of the creditor whom he has opposed. Still, although the Commission are of opinion that the provisions of the original Code of Civil Procedure as to the service of notices is sufficient, His Excellency in Council is satisfied that, even if there is not so much fraud of the kind as has been alleged, there is much room for it. He is therefore very glad that the law, as recently altered, requires the court to examine the serving officer on oath before substituted service is allowed.

Ex-parte decrees.

Distance of courts.
Length of time occupied in trying contested suits.
Inability of Judge to render ryot assistance.

9. The Commissioners are of opinion, on the whole, that sufficient chance is not at present given to a defendant to say his say: (i) because the courts at present are far away; (ii) because the defence of a suit takes longer time than the defendant can spare; and (iii) because the Judge cannot now, should the defendant be unrepresented by a pleader, go into the rights of his case and make up to him the want of counsel as he could do if he had more time.

* *Vide* the accounts at page 84 of Mr. Shambhuprasad's Minute. In one case an advance of R10 cash was made in 1863. Sums amounting to R110 were paid from time to time, but at the end of ten years R220 were still due.

The Commissioners, therefore, recommend—

Circuit courts recommended, and appointment of more Subordinate Judges.

(I) that courts should go on circuit; and

(II) that more Subordinate Judges should be appointed.

The proposal that courts should go on circuit is, in the opinion of His Excellency in Council, one that should be carefully considered.

As regards the increase in the number of Judges, which the Commissioners have suggested, the measure is supported by numerous complaints: firstly, that the Subordinate Judges have now more work than they can compass, and could not try more disputed cases than now if they had them; and, secondly, that the income from court fees is much larger than the expenditure on the courts. Theoretically it no doubt is the case that the administration of justice should not be used as a source of revenue, and His Excellency in Council would be glad to learn that the Government of India are prepared to receive proposals for increasing the number of Subordinate Judges. But he is aware that, from a financial point of view, the scheme simply amounts to increased expenditure from the general exchequer, and it would be useless submitting the detailed requirements of the country unless the Financial Department were prepared to view them favourably. His Excellency in Council would, however, remark that, next to peace and security of property, the good administration of justice is the principal benefit which the British are wont to boast of having introduced into India, and that, next to the military and executive establishments, the Judicial Department is the last in which inefficiency should be allowed. He would point out that, overworked as the Subordinate Judges are now, they will, if their numbers be not increased, be unable to cope satisfactorily with the additional work which the new Civil Procedure Code will entail on them, and to a great extent the improved provisions which the Legislature has enacted will be inoperative.

Financial aspect of proposal.

Urgent necessity for more Judges.

10. Complaints have also been made that the Subordinate Judges are untrained and technical, and unable to administer equity. The Commissioners do not say directly whether this is the case or not, but they are of opinion that to administer the law properly better men should be employed than can be obtained for Rs. 200 a month. His Excellency in Council, however, considers that the complaints as to the qualifications of the Subordinate Judges are unfounded, and that their pay, which ranges from Rs. 200 to Rs. 800 (Small Cause Court Judges drawing Rs. 1,000), and which was raised only recently, is sufficient. The proceedings of the Subordinate Judge are subject to the revision of the District Judge and the High Court, and this Government are not prepared to recommend more expensive establishments.

Untrained and technical Subordinate Judges.

11. The high costs of suits are mentioned as another reason why the defendants decline to contest their cases; and the Commissioners add that there appears reason to think that some of the miscellaneous court charges, fees for copying, attachments, processes, and the like, are unduly burdensome. The High Court will be moved to make an inquiry into this allegation, and favour Government with their opinion. No doubt there are many expenses besides court fees which raise the cost of litigation, such as batta to witnesses and the like; but cheapened, as justice undoubtedly ought to be, the finances of India could not possibly undertake the burden of items like these.

High costs of suits.

Difficulties of the ryot after a decree has been passed against him.

III.—Difficulties of the ryot after a decree has been passed against him.

12. The ryot's principal trouble begins when the money-lender has obtained his decree. For them the first and most objectionable measures of pressure may be put on him. He may be arrested and imprisoned.

Imprisonment for debt.

The Commissioners very strongly urge the total abolition of imprisonment for debt, but His Excellency is not prepared to commit himself to this very positive expression of opinion, as he considers it will be a very strong measure to deprive creditors of this security in respect to debts already contracted. There can, however, be no doubt that advantage is frequently taken of civil imprisonment to impose upon prisoners more severe terms than could otherwise be obtained, and the system in this country is peculiarly open to abuse. The Honourable Mr. Rogers is, however, in favour of the Commissioners' proposal, and he wishes that the Minute which he wrote on the 29th May 1876 may be forwarded to the Government of India with this letter. A copy thereof accordingly is herewith sent.

Its abolition strongly recommended.

13. The next hardship the agricultural debtor suffers is that all moveable property, of whatever kind or description it may be, can be sold without any reserve. The Government are very glad to find that the Legislative Council have forestalled the recommendations of the Commissioners in this respect, and that the houses of agriculturists, their necessary wearing apparel, implements of husbandry, etc., are to be exempt from sale in future.

Sale of all kinds of moveable property.

14. The next question to be approached is perhaps the most important of all, and theone that requires the most delicate handling, *viz.*, the power of the courts to sell land for money debts, the mode in which this power is exercised, and the effect it has on the rural community. And other cognate questions, such as the propriety of allowing ryots to be deprived of their land at all for debt, can be conveniently considered here. The position of affairs in this Presidency at present is as follows : Government have converted the revenue-paying land into a transferable and heritable property. Some of those who lament to see the land passing rapidly from the Kunbi to the sowkar doubt, as Mr. Pedder puts it, whether Government have been right in making it as saleable as a bullock or a turband, and would apparently wish to recall the gift that has been made. This view, His Excellency in Council may at once state, he could not possibly accede to; it would be an act of confiscation not justified even by the present state of affairs. Others who do not go this length would check or forbid the sales of land by the courts for debt, but would allow the creditor to appropriate all the profits of the land. To this His Excellency may say that he does not see his way to making a man's land not liable for debts which have been fairly contracted (most of them, either actually or impliedly, on the very security of the land), and are proved to be justly due. If the proprietary right is allowed to continue, as it must, free and unrestricted dealing in land must be allowed to. Where, for instance, owing to the lightness of the assessment, the demand for produce, and other causes, the land acquires a saleable value which it had not before, the owner also acquires a power to raise money upon it. If he be resolved on thus raising money, Government are quite powerless to prevent him. They may, it is true, place artificial obstacles in his way, but these must all in the end be evaded; and as the only effect of them will be to raise the interest on the money borrowed, it would be a short-sighted policy and against the interests of the ryot to create them. For if the ryot wants money, he cares not at what rate of interest he borrows. So, too, the proprietary right being given, Government are unable to prevent the ryot selling or leasing his property to whom he will; and any laws which would not directly convert the land into untransferable instead of transferable property, would, as the Commission remark, also be evaded. It may, therefore, His Excellency in Council assumes, be held both impracticable and undesirable to interfere with a ryot's full power to mortgage his land or to alienate it privately, and if he can do this, His Excellency in Council can see no valid reason for preventing a court also treating the land as liable for debt. The Commission's report shows that, whether mortgaged land is left standing in the debtor's name by the Marwari, as is usually the case, or whether the latter obtains a decree and buys the land in at a trifle, he does not take the owner away from the field—the sting of total divorce from the soil is not added to the debtor's misery. It is not stated clearly whether, should a person, other than the creditor, buy the field, the new owner similarly permits the old one to remain as a tenant, but there is every reason for thinking he does. Under these circumstances there is not much real difference between the sufferings of a ryot whose field has been sold and one whose mortgages have not been foreclosed.

Sales of land by the civil courts.

Exemption of land from sale for debt not recommended.

Government ought, however, to provide that, when land is sold, the sale shall be carried out in the manner best calculated to yield a good price; and, if the law is to take its ordinary course, this is about all they can do.

Mode of conducting sales should be improved.

There are at the same time various reasons why the Government should, if they can do so, without violating the conditions of the property or depreciating its value, endeavour vour to assist ignorant and indebted ryots in recovering their solvency and to save them from the rigour of the law. It is a great economic evil that much of the soil should be cultivated by disheartened tenants who were formerly owners. The land produces less, and the wealth of the country is diminished; while the new owners, as a body, decline laying out capital on the fields they purchase. The Commission point out how in one special degree the ryots' indebtedness affects the well-being of the country at large, *viz.*, that they will not take water from

Reasons why Government should assist ryots whose fields are liable to sale.

irrigation canals, even when constructed by Government, as the labour involved in rearing irrigation crops is much greater than in raising ordinary dry crops, and the profit all goes to the Marwari landlord or mortgagee. Besides, it would be a pity to lose any effort for converting the ryots into a happy, independent community of small proprietors, or for securing to them the benefit of the boons Government intended for them. Another consideration is that crime increases in a country where the rural population is discontented and rack-rented; and, to say nothing of the political danger involved, the difficulties of administering such a Province are much enhanced. For these reasons Government might, in the opinion of His Excellency in Council, provide, when the sale of land is decreed by a court—

> that, should the profits of the land be found sufficient, if properly managed to defray the debts in a reasonable time without divesting the owner of all proprietary right in it, the sale should be postponed, the amount of the debt should be raised or advanced by Government, and the land managed by an agency appointed for the purpose, till the debt should be gradually paid off.

15. It was the intention of His Excellency in Council to consider the proposals of the Select Committee on the Civil Procedure Code, and examine how far they provided for the measures above indicated. It appears, however, that the Code has actually been passed now, though a copy has not yet reached this Government. Under these circumstances, as His Excellency will very shortly leave India, and is anxious that his views should be placed before the Government of India, he has determined to forward this communication without any further delay. He is conscious of the extreme difficulty of the questions that present themselves in connection with the liability of land for debt, and the importance of striving by all the means in his power to benefit the rural population. But he is strongly of opinion that, as far as possible, nothing should be done tending to interfere in the trade of money, to lessen the value of land, or to exempt a man from the consequences of a legitimate contract. All that can be done is to prevent fraud, facilitate the course of justice among the ignorant and poor, and render such State assistance to the debtors as is consistent with absolute justice to the creditors. He trusts that these boons may in course of time be secured to all Her Majesty's Indian subjects, and that the Civil Procedure Code just passed may be found to be of use in securing some of these benefits.

16. In conclusion, His Excellency in Council is sure that the Government of India will concur with him in thinking the Commission deserving of high credit for the way they have carried out their laborious task, and that Her Majesty's service has experienced a severe loss in the premature deaths of Mr. Carpenter and Mr. Lyon.

No. 15. *Minute by the Honourable* A. Rogers,—*dated 29th May* 1876.

Deccan Riots Committee Report.

It would be a work of supererogation to attempt to follow the Committee in the elaborate inquiries they have made into the condition of the Deccan ryot, and the various causes that have led to the late unfortunate outbreaks of violence which have resulted in the appointment of the Committee. Their general conclusions, and the remedies they would suggest, are contained in Chapter VII of their report, and to these I will confine my remarks, taking the former in the order in which they stand printed.

Paragraph 122.

Under the head of "Poverty" it is admitted that the only possible means of mitigating this cause of the indebtedness of the Deccan ryots lies in the improvement of the conditions of agriculture by irrigation, and that the incubus of debt requires to be removed before they can be expected to avail themselves largely of such means. A suggestion, however, is thrown out that the rules for carrying into effect the provisions of the Land Improvement Act might be modified in such a manner as to make it more easy for a ryot to obtain the advances authorised under that Act than under the present rules. These rules, however, have already been made as simple as they can possibly be, consistently with security for recovery of advances made. For all such small sums as a ryot can ordinarily require for the petty works of improvement he can undertake he can always apply to the Assistant Collector in charge of his own taluka, and can obtain them without any more elaborate formality than is absolutely necessary to provide for re-payment. It is an undoubted fact, one already brought to notice in the Collector's annual administration reports, that the people do not avail themselves of these facilities; but the causes are not to be found in the absence of facilities. They pro-

bably lie in the fact that in most cases the people dare not forsake their old creditors, and that the latter discourage the contraction of loans which would in any way interfere with the realization of their own debts. It would, of course, not be practicable to make advances without security, and short of this I see no attraction that will lead the ryot to prefer public to private loans.

Paragraph 123.

Passing over the heading of "Ignorance," the only remedy for which is, of course, education, but to counteract which to a certain extent other remedies, which will be adverted to presently, are proposed, we come to the pressure of population on the soil.

Paragraph 124.

This, the Committee remark, can only be met by increasing the production of the soil or by emigration. Provision by the State of means of irrigation by canals will here and there mitigate the evil; but the palliative can only be partial, inasmuch as the construction of canals in most parts of the Deccan is a physical impossibility, and temporary, inasmuch as the increase of population will not cease (until at all events a Malthus revolutionizes the social customs of the country), and its pressure will soon overtake any increased production that irrigation may bring about. Emigration remains, and to this in a modified form necessity has already driven the superabundant population of the Ratnagiri District, which supplies a large proportion of the recruits for our Native Army, as well as for the fortunately accessible labour market of Bombay. Localities suitable for agricultural emigrants are, however, in this Presidency but few, and may be summed up in the Panch Mahals in Guzerat (which I have no doubt will within the next 50 years be occupied by the superabundant population of the neighbouring districts), Khandeish, and to some extent North Kanara. But as yet the pressure in the Deccan has not reached the point at which emigration will be resorted to as a relief. The people are still, though in a very small way, peasant-proprietors, and it will not be till a large proportion of them sink from this to the position of day-labourers, and find it difficult to gain their bread even in that position, that they will think of emigrating. If any relief is to be afforded, then it must be by much more immediate measures.

Paragraph 125.

Under the head "Rigid Revenue System" a vague suggestion is put forward that there may be discovered some method of adjusting the Government demand to the ryots' capacity in a country of uncertain rainfall, which may not be open to the objection of uncertainty. Now every thing but a rent fixed in cash must be an uncertain demand, and even this must exercise an uncertain pressure upon the resources of the ryot, as it must in different years with varying prices of agricultural produce represent a larger or smaller proportion of the actual produce of the land. Setting on one side as obsolete and impracticable the system of the levy of an actual grain-rent, the fixing of such a rent commutable into money, if practicable (which when the varieties of agricultural produce are taken into consideration it is not), would introduce a still greater element of uncertainty into the ryots' annual prospects. In a good year prices would probably be low, and the incidence of the rent would be lighter than in a bad year, in which prices would be high, and the commuted grain-rent would accordingly represent a larger amount of money. The result would be the very opposite of advantageous to the ryot himself, and the State would be benefited in a good year less in proportion than in a bad one. There would remain the system of a sliding scale of rent in cash or grain, commutable into money, varying according to season and the prices of produce, which it needs no demonstration to show would be more uncertain and more impracticable than either of the preceding, and would tend fatally to the discouragement of investment of labour and capital in the improvement of the soil.

It is difficult to understand what the Committee really mean by their suggestion. The statement of remissions under the ryotwari system in the Madras Presidency, given at page 289 of Appendix C, gives no clue to the principles on which remissions are granted; but it appears to have been ascertained that the rate depends on examination by local officers of a sufficient number of fields. This is objected to, and the fact that landlords in the North-West Provinces give remissions is then adverted to as an argument in favour of elasticity of demand. All this amounts to no more than that the demands of Government for rent should not be exacted to the uttermost rupee, but that remissions should be given, where found necessary, without too minute inquiry into individual cases. That in this respect we have nothing to learn from the Committee, as this is precisely what is done can be shown by reference to the remissions given in the current year in these very drought stricken districts of Bhimthari, Indapur, etc.

There is a practical suggestion in paragraph 126, that where on revisions of assessment the Government demand is enhanced more than 25 per cent., the increase should be imposed gradually, according to the practice of the North-West Provinces. Now, this system is not now advocated for the first time, and has been after due consideration rejected in this Presidency. The probability is that in the North-West Provinces it is found advisable to adopt it in order to give time to zemindars or the representatives of village communities under various names to meet an increase in the demands of the State, by bringing more land into cultivation. This ground, however, does not apply in the case of individual ryots who have no more land to bring under the plough. What their means are now for meeting increased demands they will be five or ten years hence, and the prospect of such increase must have the effect of unduly diminishing the value of land as a security, in the future as well as at the period of first enhancement. If the full enhancement is made at once, the ryot at all events has learnt the worst, and can make his arrangements accordingly. If he wishes to raise money to improve his property, he can do so without hesitation, for he knows the entire profits will be his own. If he knows that five or ten years hence, and again in a certain number of years more, his rent will be increased, with what confidence will he set to work to improve his fields? Moreover, however theoretically correct a gradual enhancement may be, and however practicable in the case of large payments for villages or estates of considerable area, the system becomes unworkable when applied to the case of ryots with small holdings under our revenue survey system. Many men have holdings of only a few rupees in value, and these probably composed of small scraps of land here and there, forming only portions of survey numbers: to these of course the proposed system of gradual enhancement of rent would be quite inapplicable. Even in the case of men with larger holdings such a system is unnecessary, because the survey rules do not bind a man to maintain his holdings entire: he can throw up any portion separately assessed in the village books, and need only keep and pay for as much as he may find it convenient to retain, so that in reality it depends a good deal on himself whether the enhanced assessment presses heavily on his means or not. Applying the proposal to the cases of the particular talukas to which the Committee's report chiefly relates, there would be a great want of equity in carrying it out, even where it was practicable. The increase has arisen from various causes—*e.g.*, a general rise in the value of agricultural produce and in that of land in consequence of new markets and improved means of communication, relative undervaluation of land at the first survey settlements, cultivation of land wrongly entered at the time of those settlements as unarable, and actual encroachment on land not belonging to the holdings at all. Gradual enhancement could only be equitably carried out in the case of payments increased under the first of these causes only, and yet in the majority of holdings the increases would be found traceable to several of the causes combined. If the cases in which increase was due to the first cause were eliminated, the rest would be found to be very few in number and the increases to be trifling. In a statement of increases in the 33 Pandharpur villages lately settled, sent up by the Survey Commissioner, the number of cases in which the combined causes of general increase of rates and the substitution of relative fair for former undervaluation of lands had led to enhancement were infinitesimal, and the enhancements in no case exceeded from Rs. 5 to Rs. 10 on the holdings.

On the whole, then, I am opposed to the Committee's proposal for gradual enhancement of rents where the increase exceeds 25 per cent.

The more generally applicable remedies proposed by the Committee commence from paragraph 127, but before going into the questions of reform of the law contained in their Bills for the prevention of frauds and to limit the excessive powers given to decree-holders, it will be advisable to follow the Committee in their proposals for reform in the conduct of judicial business. After showing that in the districts of Ahmednagar and Poona the suits for debt in the Subordinate Judges' Courts are in the proportion of about 93½ to all others they show further that of the former about 91½ are for debts under Rs. 200 in amount, and consequently only about two per cent. involves sums above that amount. From these facts they urge the grant of Small Cause Court jurisdiction generally to all Subordinate Judges' Courts, and that these courts should sit in different villages, in regular order, in such a manner as to render it generally unnecessary for litigants and their witnesses in such petty debt suits to be absent from their homes for longer than from morning to evening of a single day. The suggestion is, in my opinion, an excellent one; but it requires to be gone into in detail far more than I can in the course of this Minute, to determine whether the expense of carrying it out would be covered by the fees paid and stamps used in the litigation.

Paragraphs 128 to 130.

I quite agree with the Committee that the patels of villages should be made officers of the civil courts, to be present and to attest the execution of processes, etc., if not to execute them themselves. It will be remembered that a short time ago this principle was affirmed in our own Legislative Council by its being laid down that the village officers should be charged with the execution of processes under the revised Act for Mamlatdars' jurisdiction in summary possession cases.

They also hope that the Subordinate Judges will be able, when their courts become itinerant, to do without pleaders in a great measure, and get people to plead their own cause. I believe, however, the law with regard to the employment of pleaders would have to be a good deal relaxed to admit of this, and feel certain that in order to give the Subordinate Judges themselves the necessary time to sift cases thoroughly, and endeavour to do real justice the present high pressure system of judging their merits more by the quantity than the quality of their work, which leads them not to look with disfavour on *ex-parte* suits, must be abandoned. A very striking commentary on the disfavour with which the method of procedure of the civil courts is looked upon in the Deccan is afforded by the fact of the private courts of arbitration that have lately been established in the Poona and Sholapur Districts, and which, it is reported in the Native Press, are largely resorted to by even Marwaries. I hope to see this movement spread, and to find arbitration more generally resorted to than it is at present. It would have been more convenient if, in discussing their proposed measures of relief, the Committee had first taken their proposals for the protection of the illiterate borrower against the preliminary wiles of the unscrupulous money-lender. I, therefore, pass at once to the draft Bill for the prevention of frauds.

To the proposals of the Committee for the appointment of Public Notaries, and generally as to the functions of these officers, I cordially agree. The difference in intelligence and education between the lender and the borrower in this country render such a step not only necessary in the interests of the latter, but also one of great political importance. The Bill, which is merely a rough draft, will of course require considerable amplification; but all its provisions, especially those relating to the granting of receipts and copies of accounts are desirable.

I observe that in paragraph 137 allusion is made to proposals submitted by a member of the Committee for dealing immediately with debt existing in the disturbed districts. These were, I presume, the scheme originated by Mr. Richey, under which Government were to advance money to clear off the ryots' debts by compromises with their creditors, and gradually recoup themselves from the produce of the lands, which were to be held as security for the re-payment of the advances. I have already minuted very strongly against the adoption of any such proposals; and as I have heard nothing of them for a long time, I trust they have been finally shelved as impracticable, if not highly impolitic In the course of my remarks on Mr. Richey's scheme, I suggested that what would at once restore confidence in the lately disturbed, but now perfectly quiet, districts, would be a return to the old law of limitation under which bond debts ran for twelve, instead of for three years as under the present law. It would be equally effectual in preventing the recourse of creditors to the powers they possess under the existing laws against their debtors, which, the Committee fear, may be the effect of the discussion of the measures they have proposed, and I would strongly urge its adoption.

In most districts of this Presidency the provision of Public Notaries in sufficient number throughout the country could be effected without any great expense by the employment in that capacity of the village accountants, hereditary or stipendiary, already entertained. These men, as a rule, are intimately acquainted with the circumstances of the ryots in their respective charges, and as their employment would make the contraction of loans matters of public notoriety, additional security would be afforded to the ryot that all was fair and above board, and public opinion would be brought to bear on the petty money-lender in his original as well as his subsequent transactions with his debtor, so that there would be every probability of the system of extortion exercised by the more unprincipled among the former class described by the Committee being checked.

The main object of the draft Bill to amend the law relating to the execution of decrees is described to be the very reasonable one of reducing the creditor's power over his debtor to what may be sufficient for the protection of legitimate trading. It is a difficult matter to say what the particular limit of power shall be, but I consider that the Committee have fairly hit it off.

There can be little doubt of the abuse of the power of imprisonment for debt in its being availed of, not for the original purpose meant under Act VIII of 1859, which was to force a full disclosure of the debtor's property, but to hold a decree *in terrorem* over him for the purpose of further extortion. This appears abundantly proved by the fact of so few debtors being actually imprisoned for whose apprehension warrants are issued. The object the power of imprisonment was meant to serve is to be effected by giving a creditor power to force his debtor to declare the whole of his property on pain of imprisonment for refusal, or for giving a false account of, or concealing or fraudulently making away with it. The proposal to exempt necessaries from sale in execution of decrees is simply a return to the law, as it existed before Act VIII of 1859 was enacted, and I think I am not wrong in attributing the greater portion of the evils it is proposed to take steps to remedy to the enforced departure of the courts from the salutary old custom. A return to it is, in my opinion, as necessary in the interest of the creditor, as of the debtor, for it will prevent the former from, as he does now, killing his goose with the golden eggs. I heartily agree with this proposal.

With regard to the third proposal, that immoveable property should be sold only by order of the District Court, and after enquiry, I see no reason why the power shall not be extended to the Subordinate Judges' Courts. I would, however, oblige the actual sale of the occupancy right in all land-paying revenue to the State to be held after due notice before the revenue authorities under the Collectors' instructions, and give power to the Collector to substitute for such sale a temporary attachment and management by himself in all cases offering a fair prospect of the liquidation of the debt by such means, say, within ten years.

I agree in the principle of the proposal to make a decree for debt obtained the *finis liti.* The possession of a decree is now no doubt a most potent means of extortion on the part of unscrupulous usurers, and to the abuse of the power thus obtained is due much of the mischief the Committee have had to report upon. Whether the object will, however, be gained by the simple proposal in Section 7 of the draft Bill, *viz.*, that any agreement made by way of adjustment of a decree shall be carried into effect by the court executing the decree, and not by a separate suit, appears to me very doubtful. There are so many causes that would tend to render nugatory the provision of Section 8, that any agreement extorted by the use of a court's process in execution of a decree, or by a threat of such use, shall be void, that I suspect much more elaborate provision than this would have to be made, and that any provision that could be made would be liable to be evaded. The necessity of the debtor and the willingness of the creditor would be the mothers of very complicated inventions in such cases. I concur in the Committee's proposal that no application for the execution of a decree should be received after the expiration of six years from its date, or, where the debt decreed for is to be paid in instalments, from the date of the instalment of which payment is sought to be enforced, only as a compromise between the present limit of three, and the old limit of twelve years, the latter of which I am strongly in favour of for all transactions, whether of simply contracted or decreed debt. The short periods of limitation prescribed by the existing law were laid down with the philanthropic purpose of forcing men to look betimes to their position, and not allow themselves to drift out of their depth in debt, but that purpose has not been obtained, and never will be, as long as the people and their normal condition are what they are. Life-long poverty and the continued struggle of existence, with the stolid apathy engendered by such a state of things, are inconsistent in their nature with any attempt at teaching the people forethought or care in such matters by legislation, and the sooner the attempt is abandoned the better in my opinion. On the other hand, when a village-usurer lends money, he does not do it with the banker's idea of getting it back in order to turn it over again constantly, but by way of permanent investment on which he may live. Where his cupidity, therefore, has not been worked upon by the chance he sees the law has thrown open to him of indefinitely increasing his nominal capital by the constant renewal of bonds, a short period of limitation is no object to him.

There is another forcible reason why the old limitation law should be restored, at all events in the districts to which the inquiries of the Committee have chiefly extended. The feelings of the two classes, the borrowers and the lenders, have been very much embittered towards each other. The former are only held back from open violence against the latter by the fear of punishment, and the latter are restrained from enforcing their demands through the courts, and carrying matters to the bitter end by fear of that violence. This state of matters, discreditable as it is to our rule, should, if possible, be put a stop to, or a spark may suddenly kindle a flame that it will take much more stringent measures to extinguish than those found efficacious hitherto. It may take years of discussion before the measures proposed by the

Committee can be carried into effect, and we are in the meanwhile letting things slide. The money-lenders, however, cannot afford to wait while the law of limitation remains what it is: they must execute their decrees if they would not lose their capital, and this is a loss no one can be expected to put up with. Let the old law of limitation be reverted to for the Deccan Collectorates, and both parties will gain time during which to come to an amicable settlement. Each party is dependent on the other, and the ordinary ryot can no more do without the village money-lender than the latter can do without his dealings with the ryot by which to earn his livelihood. Where such is the case, and where the source of the livelihood of both is the precarious outturn of the soil in uncertain seasons, it is bad policy to carry out laws which sow dissension between parties whose interests are identical, by not allowing time for them to settle their transactions to their mutual satisfaction.

The first and foremost remedy for the existing state of matters should therefore, I am convinced, be a return to the old law of limitation, and then the measures proposed by the Committee, combined with such modification of the laws under which the civil courts work as to enable them to act more as courts of equity than as courts of strict law.

A. ROGERS.

From the Honourable E. W. RAVENSCROFT, C.S.I., Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Department of Revenue, Agriculture and Commerce,—No. 308, dated Bombay Castle, the 19th January 1878. **No. 16.**

I am directed to forward herewith, for submission to the Government of India, a draft *Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay*, which it is the intention of His Excellency the Governor in Council to introduce into the local Legislature, and to make the following remarks with reference thereto.

2. The views of this Government as to the causes which led to the Deccan riots of 1875, and the remedial measures to be adopted, were expressed in my letter of the 6th April last, No. 2202. His Excellency the Governor in Council adheres to these views generally, and believes that many of the evils suffered by the people are beyond the power of Government to cure—being curable only by the people themselves. Still further experience, combined with the lessons of recent events, have convinced him that some effort should be made by legislation to mitigate those evils even though they cannot altogether be prevented by Government.

3. The evils described by the Deccan Riots Commission are probably existing in a somewhat milder form now than, say, two years ago, when the Commission sat. The famine has turn the thoughts of both creditors and debtors into other channels. The disturbances of 1875 opened the eyes of the creditors as to the danger of pushing things too far. It is thought that the money-lenders are under the impression that the authorities are adverse to extreme pressure being applied to the ryots. It appears that from one cause and another the money-lenders are in some degree refraining from worrying the ryots.

Still these evils, though not exacerbated just now, exist, and will sooner or later break out again.

4. Meanwhile the new Code of Civil Procedure, which came into effect from the beginning of October 1877, has in several respects improved the condition of the ryot. By it a ryot's necessaries will be protected from sale for debt; his land, instead of being inconsiderately sold in execution of a decree, will be brought under judicious management by the revenue officers; and he will be protected from arrest on a decree if he declares himself to the court as an insolvent. And if his total debt does not exceed R200, he may be absolved by the court from all further liability. But these improvements, which are considerable, leave several of the roots of mischief untouched.

5. There is, as shown by the Commission, much in the condition of the Deccan ryots which exposes them to temptation to run into debt. They are liable always to more than ordinary vicissitudes of season, suffering from drought and losses for a year or two years consecutively, and then having a bumper season to make up for all. They have sometimes had abundant employment and high prices, together with abundant produce, and then they have suffered from a cessation, or rather a reversal, of these good conditions. They are thus tempted in bad seasons to incur debt which they hope to pay off as soon as more favourable circumstances recur, and to urge them in their inclination they have at present a fatal facility for obtaining cash from money-lenders. Once, however, the money has been taken, the ryot is on the way to ruin, for the money-lenders have great facility for making the principal of the debt mount up by compound interest and the like to something fabulous, and then for recovering the whole principal and interest by processes which drive the debtor from house and home.

6. It is, in the opinion of His Excellency the Governor in Council, the duty of Government to see that the laws do not tend to bring about the state of things just described. At present they do actually so tend. To remedy this His Excellency the Governor in Council considers, after much consultation with well informed persons, that three things are wanted in the districts* to which the report of the Commission refers, and in others similarly situated,—

* Namely, Poona, Ahmednagar, Sholapur and Satara.

(a) *Firstly.*—His Excellency the Governor in Council is of opinion that the civil courts should be obliged to examine the merits of the claim for which they are asked to pass a decree. At present if a bond duly executed and attested is presented, the court must pass a decree, and the ryots, seeing the hopelessness of contention, seldom appear in order to put in any defence, but allow the decrees to be passed against them *ex parte*. But the bond may be utterly unjust—indeed, generally is more or less unjust. A fraction of it only consists of principal, the rest is all made up of interest. The bond itself is by no means the original one, but has been renewed three or four times, the sum total having been largely augmented at each renewal. Thus, for example, ten rupees borrowed mount up after a few years to an ostensible debt of a hundred rupees. Again, the debt may not have been incurred by the ryot himself, but by his father or grandfather. The man may know something of his own debts and of the interest thereon accruing; but he may be rendered liable for an ancestral debt of which he has but a vague idea, while he knows almost nothing of the manner in which the interest has been made up. Therefore, the courts should be not only empowered but directed to go into all these points to separate the real debt from the factitiously accrued debt. Compound interest should in no case be allowed, and it should be declared that in no case should the aggregate amount of interest exceed the principal. There should be a distinction between a ryot's liability for his own debts and his liability for those of his ancestors. He should not be made liable for his father's or other ancestor's debts until he has been asked whether he accepts them. If he accepts, he should be rendered responsible, after reasonably scrutinizing and taxing his debt, for the full amount payable. If he declines to accept, the court should ascertain the principal of the debt, and, in case it was incurred by his father, award the principal with simple interest during his father's life-time only, provided always that the interest does not more than equal the amount of the principal. In all other cases he should not be liable for any interest at all.

(b) *Secondly.*—It appears to His Excellency the Governor in Council that a ryot should be given the right of coming forward *at any time* and claiming the benefit of the Insolvency Court, just like the citizens of capital cities, such as Bombay and Calcutta. At present, as already stated in paragraph 4 of this letter, the man can do so *only* when, after the passing of a decree, he is arrested in execution—then and not till then.

(c) *Thirdly.*—A ryot's 'ryotwari' land (revenue-paying land) ought not, His Excellency the Governor in Council considers, to be sold for debt, unless it has been specifically pledged by him in a bond registered before a rural registrar or notary; for it so happens that in numerous cases land is sold for debt incurred many years ago before the ryot had been by the survey and settlement declared the virtual proprietor, or (if the survey and settlement had been introduced) before either debtor or creditor had realized in their own minds the effect of the measure,—in short, when the creditor did not know that he would ever have such a security as the land for a loan, and when the debtor never knew that he would incur such a contingency as being sold out of house and home. The present law does indeed require that all bonds for land over Rs. 100 in value should be registered, but this is not sufficient in the interests of the ryot, and registration ought to be extended to *all* bonds for land. If registration is required to give validity to bonds of Rs. 100, much more is it required for small bonds which are usually passed by a more ignorant and helpless class than that having larger transactions. Registration of *all* bonds for land is provided in the Code Napoleon, and similar provisions are to be found in nearly all the civilized Codes of Europe and America. In India alone is the ignorant man left unprotected

from fraud, except in Oudh, where public notaries have been appointed, and are said to be popular. If registration is extended to all bonds for land, it will not indeed debar the ryot from executing any bond, however improvident, but merely provide that he understands the conditions of the bond, and that a copy of the document is kept as a precaution against fraud and forgery. Many a man will incur debt without reflecting that he runs the risk of losing his land—to him one of the greatest of penalties. But he will hesitate if he is called upon to execute and register a bond pledging the land, and this will exercise a moral check upon his borrowing, while it will render the money-lenders less facile than they are now in lending.

7. The three remedies spoken of in the last paragraph have been put into legal shape in the Bill now submitted. Special laws like this have been passed for insolvent debtors, or for special classes of them, in Oudh, in Western Bengal (Chota Nagpur), in Sind, and in Guzerat. The case of the ryots of the Poona, Ahmednagar, Sholapur, and Satara Collectorates needs special legislation quite as much as any of these cases, or more; and the strict limitation of area to which it would be applicable smooths difficulties from the way of such legislation. The area will probably be extended hereafter should the experiment now about to be made prove successful.

8. The remedies are not indeed perfect, because *no* legislation can prevent two parties from colliding, and so running into danger, if they are infatuated or resolutely minded, nor render people prudent who are bent upon imprudence. But they will remove some of the inducements which now allure people into trouble, and will supply counter-inducements to keep out of such trouble. They will make the ryots more careful in borrowing and the money-lenders more chary in lending. They will diminish the ryot's credit without altogether destroying it, and they will stop many cases of hard injustice which now continually occur under the very shadow of the courts, and which naturally exasperate the people.

9. In conclusion, I am to request that you will be good enough to move His Excellency the Viceroy in Council to favour this Government with an early expression of his views on the subject of this letter. His sanction to the introduction of the Bill into the Bombay Legislative Council is also solicited.

A Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay. No. 17.

Whereas it is expedient to relieve the agricultural classes in certain parts of the Presidency of Bombay from indebtedness, and for this purpose to make certain special provisions for regulating the procedure of the Civil Courts in the said parts in cases relating to the debts of agriculturists and to extend to the said agriculturists the benefits of a law of insolvency; It is enacted as follows:

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Bombay Indebted Agriculturists' Relief Act, 1878."

Extent and commencement.

It extends only to the Districts of Poona, Satara, Sholapur and Ahmednagar, and shall come into force in those Districts on the passing thereof; but it shall be lawful for the Local Government, with the previous sanction of the Governor General in Council, from time to time by notification in the *Bombay Government Gazette*, to extend all or any of its provisions to any other local area within the said Presidency.

Definitions.

2. In this Act, unless there be something repugnant in the subject or context:

"Agriculturist."

(1) the word "agriculturist" means a person who earns his livelihood wholly or principally by agriculture;

"Money."

(2) the word "money" includes grain.

TRIAL OF CLAIMS AGAINST AGRICULTURISTS FOR DEBT.

Court of first instance to determine whether the debtor is an agriculturist.

3. In any suit brought for the recovery of money alleged to be payable on account of money lent, it shall be incumbent on the Court in which such suit is instituted, to ascertain and determine whether the defendant, or any one of the defendants, not being a surety merely of the actual debtor, is an agriculturist.

Whenever a court of first instance determines under this section or under any other section of this Act, that any person is, or is not, an agriculturist, its decision on such point shall be final.

If the debtor is an agriculturist, the actual amount of money lent to him to be ascertained.

4. If the Court's decision under the last preceding section is in the affirmative, it shall be incumbent on it to ascertain the actual amount of money lent. For this purpose the Court shall—

(a) require the plaintiff to prove the origin of the debt, and the nature of each subsequent transaction, if any, in respect thereof;

(b) if any written acknowledgment of debt is relied on by the plaintiff, require him to prove to its satisfaction that the whole of the amount therein named was actually advanced to the debtor.

The amount to be fixed by equitable estimate, if it cannot be otherwise ascertained.

5. If in any case the circumstances are, in the opinion of the Court, such as to satisfy the Court that some money has been lent, but the actual nature or extent of the transactions between the parties is doubtful, it shall be competent to the Court to determine the amount of money lent upon an equitable estimate with reference to such considerations as the following (namely):

(a) the means and position of the lender;

(b) the means and position of the borrower;

(c) the amount of credit likely to have been given to the borrower by a person advancing money to him with the *bonâ fide* intention that it should be repaid with reasonable interest within a reasonable period;

(d) the occasion on which the money was borrowed and the amount likely to have been needed by a person in the borrower's station of life on such an occasion.

Reference to arbitration in certain cases.

6. Instead of itself ascertaining or determining the amount of money lent, under either of the last two preceding sections, the Court may in its discretion, and if both parties so desire, shall refer the matter to arbitration.

When any such reference is made by desire of the parties, nomination of the arbitrator shall be made in accordance with Section 507 of the Code of Civil Procedure. When the reference is made of its own motion by the Court, it shall appoint three arbitrators, who shall be residents of the same village, town or city in which the debtor and creditor reside, if they both reside in the same village, town or city, and if, in the opinion of the Court, fit and proper persons can be thus obtained.

The provisions of sections 508 to 521 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

The amount ascertained or determined as above to be awarded with reasonable interest;

7. When the amount of money lent has been finally ascertained or determined under any of the foregoing sections, the Court shall, subject to the provisions hereinafter contained, pass a decree for such amount, with interest at the rate, if any, agreed upon between the parties, if such rate be, in the opinion of the Court, reasonable, or, if such rate be, in the opinion of the Court, not reasonable, or if no rates have been agreed upon, at such rate as the Court deems reasonable—

Provided that:

but payments, etc., already made to be deducted;

(a) All payments already made by or on behalf of the debtor to the creditor, and all profits of any kind whatever enjoyed or realized by the creditor in satisfaction of the debt shall be brought to account, and credited, as far as they go, in cancelment first of the interest, if any, due at the rate allowed by the Court at the time or times at which such payments were made or such profits enjoyed or realized, and next in reduction of the principal amount of the debt;

and interest not to be allowed if agreement so provides;

(b) if the agreement between the parties expressly so provides, no interest shall be allowed;

and compound interest not be allowed;

(c) compound interest shall not, in any case, be allowed;

(*d*) the amount of interest received or to be received by the creditor shall not in any case exceed, in the aggregate, the amount of the principal debt;

and aggregate amount of interest not to exceed the principal;

(*e*) if the debt, or any portion thereof, was not contracted by the person from whom the creditor seeks to obtain recovery, but by such person's father or other ancestor, the said person shall be called upon to state whether he is willing to accept the full responsibility for such debt or for such portion thereof; and if he accepts such responsibility, shall be held liable for the full amount payable on account of such debt or of such portion thereof under the general provisions of this Act, or of any law for the time being in force relating to liability for ancestral debts; but if he declines to accept such responsibility, shall be held liable only for the principal amount of such debt, or of such portion thereof, with interest up to the date of the death of the person who incurred such debt, or such portion thereof, if such person was related to him in the first degree, and otherwise only for the principal amount of such debt or of such portion thereof.

and in the case of ancestral debts interest to be disallowed or limited.

SUITS FOR ACCOUNTS.

Agriculturist debtors may sue for accounts and settlement of amount of their debts.

8. It shall be competent to any agriculturist at any time to sue for an account of monies respectively lent to him by a creditor and paid by him to such creditor, and for a decree determinative of the amount, if any, still payable by him to such creditor.

Amount of debts in such cases to be determined according to foregoing provisions.

When any such suit is brought, the amount payable by the plaintiff shall be determined under the same rules as would be applicable, if the creditor had himself sued for recovery of the debt; and the provisions of Chapter XXIII of the Code of Civil Procedure relating to payment into Court shall be applicable as if the plaintiff were a defendant in a suit to recover the debt, and the defendant the plaintiff in such suit.

Decree may provide for payment by instalments.

In any decree passed under this section, the Court may order that the amount due shall be paid by instalments with or without interest.

Execution of decrees under this section.

The plaintiff may pay the amount of the decree, or the amount of each instalment fixed by the decree as it falls due into Court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

EXECUTION OF DECREES FOR MONEY AGAINST AGRICULTURISTS.

Court to determine whether judgment-debtor is an agriculturist.

9. Whenever application is made for the execution of a decree for the payment of money it shall be incumbent on the Court to which such application is made to ascertain and determine whether the person against whom execution is sought is an agriculturist.

If the judgment-debtor is an agriculturist.

If the Court is satisfied that the said person is an agriculturist, the execution of the decree shall be effected, subject to the following provisions (namely):

(*a*) that land shall be liable to attachment and sale in execution of the decree only, if it has been specifically mortgaged as security for the repayment of the debt to which such decree relates, and the mortgage-lien still subsists; and

his land only to be liable to attachment if specifically mortgaged, and

(*b*) that if the person against whom execution is sought is not the person made liable by the decree for the amount of such decree, but the heir of the said person, the amount recoverable under the decree shall be determined by the Court in accordance with the provisions of Clause (*e*) of Section 7.

the provisions of Clause (*e*), Section 7, to be applied in certain cases.

PROCEEDINGS IN INSOLVENCY.

"Courts having insolvency jurisdiction" defined.

10. District Courts and all Courts which have been invested by the Local Government under Section 360 of the Code of Civil Procedure, with the powers conferred on District Courts by Sections 244 to 359 (both inclusive) of the said Code, shall be deemed to be Courts having insolvency jurisdiction.

Power to apply to be declared an insolvent.

11. Any agriculturist who is in debt, and whose debts amount to one hundred rupees or upwards, and who is not at the time under arrest or in execution of a decree for money, and any creditor or creditors to whom an aggregate sum of not less than one hundred rupees is due from any agriculturist, may apply in writing to the Court of lowest grade having insolvency jurisdiction in the place in which such agriculturist resides, to declare such agriculturist an insolvent.

Every such application shall be subscribed in the manner prescribed in the Code of Civil Procedure for subscribing and verifying plaints.

Contents of application if made by debtor.

12. If such application is made by the debtor, it shall set forth—

(a) the amount and particulars of all pecuniary claims against him;

(b) the names and residences of his creditors, so far as they are known or can be ascertained by him;

(c) the amount, kind, and particulars of his property, and the value of any such property not consisting of money;

(d) the place or places in which such property is to be found; and

(e) his willingness to put it at the disposal of the Court.

Contents of application if made by creditors.

13. If such application is made by a creditor or creditors, it shall set forth—

(a) the amount and particulars of his or their claims against the alleged debtor;

(b) the name and residence of the alleged debtor;

(c) the name and residence of any other person to whom the alleged debtor is believed to be indebted; and

(d) the grounds on which it is sought to have the alleged debtor declared an insolvent.

Creditors' application may be rejected at once.

14. If upon perusal of an application made by a creditor or creditors, and after examination, if the Court thinks fit, of the applicant or applicants, it shall appear to the Court that there are not sufficient *primâ facie* reasons for believing that the alleged debtor is an agriculturist, or that being an agriculturist he is in insolvent circumstances, it shall reject such application.

If the application is not rejected at once, notice to be served on alleged debtor.

If it is of opinion that there are *primâ facie* grounds for granting the application, it shall pass an order accordingly, and shall fix a day for the alleged debtor to show cause why the application should not be granted, and shall cause a copy of the application, with a notice in writing of the time and place at which such cause is to be shown, to be served at the expense of the applicant or applicants, on the said alleged debtor.

If the debtor is an agriculturist and in debt to applicants, insolvency proceedings to be commenced.

If on the day so fixed or on any subsequent day to which the hearing may be adjourned, the Court is satisfied that the alleged debtor is an agriculturist, and that he is in debt to the applicant or applicants, it shall require the said debtor to produce, within such reasonable period as it shall deem fit, a statement subscribed and verified in the manner prescribed in the Code of Civil Procedure for subscribing and verifying plaints setting forth the particulars named in clauses (a), (b), (c) and (d) of Section 12.

Notice of application to be served on all other known creditors besides applicants.

15. When the said statement has been filed, the Court shall fix a day for hearing the application, and shall cause a copy of the statement, with a notice of the application, and of the time and place at which it will be heard, to be stuck up in court and served at the expense of the applicant or applicants, on each creditor other than the said applicant or applicants named in the said statement.

When debtor himself has made application, notice to be served on all known creditors.

16. When the application has been made by the debtor himself, the Court, if satisfied that the applicant is an agriculturist, shall cause a copy of the application, with a notice of the time and place at which it will be heard, to be stuck up in Court, and served, at the applicant's expense, on each creditor named in the application.

Attendance of other claimants how to be secured.

17. In either of the cases provided for in the two last preceding sections, the Court may, if it thinks fit,

invite by proclamation, or by advertisement in the local Official Gazette, or in such public newspapers as it thinks fit, or otherwise, at the expense of the applicant or applicants, the appearance of persons to record claims against the debtor, and

cause a copy and notice as aforesaid to be served on any person so appearing and applying for leave to be heard on the application.

Arrest of debtor and seizure of his property in certain cases.

18. The Court may, by warrant, cause a debtor to be arrested, and any books, papers, or property in his possession to be seized, and him and them to be safely kept until such time as the Court may order, if, at any time after an application is presented against such debtor to declare him an insolvent, the Court is satisfied—

(a) that he is about to abscond or leave the jurisdiction of the Court with intent to avoid any process of the Court, or to avoid appearing to the application, or to avoid examination in respect of his affairs, or otherwise to delay or embarrass the insolvency proceedings; or

(b) that he is about to remove his property or any portion of it, with intent to prevent or delay such property, or portions thereof, being taken possession of by the Receiver, or that he has concealed or destroyed, or is about to conceal or destroy any of his property, or any books, documents or writings, which might be of use to his creditors in the course of the insolvency proceedings.

Procedure at hearing.

19. On the day fixed under either Section 15 or 16, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the debtor in the presence of such of the creditors or persons (if any) alleging themselves to be creditors as appear in person, and of the pleaders of such as appear by pleaders, as to his then circumstances and as to his future means of payment, and shall hear the creditors and other persons, if any, aforesaid or their pleaders in opposition to the debtor's discharge; and may, if it think fit, grant time to the said creditors and other persons, or any of them, to adduce evidence showing that the debtor ought not to be declared an insolvent, or be discharged, or that he is liable to punishment under Section 20 or 21.

Declaration of insolvency and appointment of Receiver, etc.

20. If the Court is satisfied that the debtor is in insolvent circumstances, and that his liabilities amount to not less than one hundred rupees, it shall declare him to be an insolvent, and may—

(a) if it think fit make an order appointing a Receiver of his property;

(b) if it does not appoint a Receiver, forthwith discharge the insolvent upon such conditions, if any, as it thinks fit;

(c) if it be shown that the insolvent, knowing himself to be unable to pay his debts in full, has recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property, direct that he be imprisoned in the civil jail for a term which may extend to one year;

(d) annul any transfer of the insolvent's property, or of any part thereof, which shall be shown to have been made by the insolvent with intent to defraud his creditors, or to give an unfair preference to any of them, and direct that the property so transferred shall be treated like the other property of the debtor.

Procedure in case of dishonest debtor.

21. If it is proved that the debtor has—

(a) been guilty, in his application or in his statement, as the case may be, of any concealment, or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or expectancy, or held for him in trust; or

(b) fraudulently concealed, transferred, or removed any property; or

(c) committed any other act of bad faith regarding the matter of the inquiry,

the Court shall, at the instance of any of his creditors, sentence him to imprisonment of either description within the meaning of the Indian Penal Code for a term which may extend to one year.

Or the Court may, if it think fit, send him to a Magistrate to be dealt with according to law.

Creditors to prove their debts.

22. When the Court has declared the debtor to be an insolvent, the creditors and other persons, alleging themselves to be creditors, shall produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall inquire into the said claims (subject to the provisions of Sections 3 to 7, both inclusive), and determine by order the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under Section 19 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

Schedule to be framed.

A copy of every such schedule shall be stuck up in the Court-house

Applications by creditors.

23. Any creditor of the insolvent who is not mentioned in such schedule may, within three months from its publication, apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may, within three months from the publication of the schedule, apply to the Court for an order altering the schedule so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors and hearing their objections, if any, may comply with or reject the application.

Effect of order appointing Receiver.

24. Every order under Section 20 shall be published in the local Official Gazette, and shall operate to vest in the Receiver, if any is appointed, all the insolvent's property (except the particulars specified in the first proviso to Section 266 of the Code of Civil Procedure) whether set forth in his application or statement, or not.

Receiver to give security and collect assets.

25. The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property except as aforesaid; and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions, if any, as the Court thinks fit.

Discharge of insolvent.

Provision if Receiver is obstructed in taking possession of insolvent's property.

If the Receiver is obstructed or resisted in taking possession of any part of the property, whether by the insolvent or by any other person, the Court shall summarily inquire into the matter and pass such order as in each case it shall deem fit, and, if necessary, shall cause delivery of possession to be made to the Receiver in the same manner, and subject to the same provisions as if a decree for the possession of such property had to be executed in the said Receiver's favour.

Duty of Receiver;

26. Subject to the provisions of Section 9, the Receiver shall proceed under the direction of the Court—

(a) to convert the property into money;

(b) to pay thereout debts, fines and penalties, if any, due by the insolvent to Government;

(c) to pay such costs of the insolvency proceedings as the Court directs;

(*d*) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any preference ;

and such Receiver may retain as a remuneration for the performance of his duties a commission to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative.

his right to remuneration ;

delivery of surplus.

27. An insolvent discharged under Section 20 or 25 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of Sections 9 and 28) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to Section 266 of the Code of Civil Procedure, and except the property vested in the Receiver) shall by order of the Court be liable to attachment and sale until the decrees against him held by the scheduled creditors are fully satisfied or have become incapable of being executed.

Effect of discharge.

28. If the aggregate amount of the scheduled debts is two hundred rupees, or a less sum, or if the debts, or any part of them, were not incurred by the insolvent himself, the Court may declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts, or of such part of them.

When Court may declare insolvent absolved from further liability.

29. When a debtor, who has been declared insolvent, has not been discharged, the Court may by warrant cause him to be arrested and imprisoned in the civil jail for a term which may extend to one year, or if such debtor is already under arrest or in prison under the provisions of Section 18, may cause him to be imprisoned or kept in the civil jail for a further term which may extend to one year from the date of such order.

Liability of insolvent not discharged.

On the expiry of any such term of imprisonment, the insolvent shall be deemed to have been discharged within the meaning of Section 27.

MISCELLANEOUS.

30. Save as is otherwise provided in Section 3, an appeal shall lie from every order passed by a Court under Sections 9, 20, 22, 23 or 27, to the Court authorized to hear appeals from the decisions of such Court.

Appeals.

The order passed on any such appeal shall be final.

Save as aforesaid, nothing in this Act shall be deemed to affect the provisions of the Code of Civil Procedure or of any other law for the time being in force relating to appeals from original or appellate decrees.

31. Nothing in this Act shall be deemed to affect the provisions of Chapter XX of the Code of Civil Procedure relating to Insolvent Judgment-Debtors.

Saving of provisions of Chapter XX of the Civil Procedure Code.

From the Honourable E. W. RAVENSCROFT, C.S.I., Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Department of Revenue, Agriculture and Commerce,—No. 584, dated Bombay Castle, the 4th February 1878. No. 18.

In paragraph 9 of my letter No. 308, dated 19th ultimo, the sanction of the Government of India was requested to the introduction into the Bombay Legislative Council of the draft Bill for the relief of indebted agriculturists in certain parts of the Bombay Presidency. This course was considered desirable for obvious reasons, the principal being that the Local Government was best in a position to judge of the special wants and the peculiarities of its Presidency, and better suited to deal with such a subject exhaustively than a distant Legislature. The Governor in Council would still desire that, if legally possible, this course should be followed.

2. Doubts have, however, since been entertained as to whether the Government of India will permit the new Bill, affecting as it does some of the provisions of the Civil Procedure Code (Act X of 1877), to be introduced into the local Legislative Council. If the Govern-

ment of India think that it is beyond the province of the local Legislature to deal with this subject, I am directed to express the hope of this Government that early steps may be taken for the introduction of the Bill into the Council of the Governor General for making Laws and Regulations.

No. 19.

Telegram from Secretary of State, to Viceroy, Calcutta,—dated 13th March 1878.

Deccan riots in my opinion experimental. Legislation proposed by Bombay Government seems worth trial; if difficulties about passing Bill in Bombay Council, it might be introduced into yours.

No. 20.

Telegram from Secretary of State, to Viceroy, Simla, dated 10th May 1878.

Lord Salisbury's telegraph 13th March: "Deccan riots. Have any steps towards legislation been taken?"

No. 21.

Telegram from Viceroy, Simla, to Secretary of State, dated 3rd June 1878.

Yours telegram 10th ultimo, regarding Deccan riots. Question of legislation under immediate and serious consideration. Result will be shortly communicated.

No. 22.

Telegram from the Department of Revenue, Agriculture and Commerce, to the Government of Bombay, Revenue,—dated 3rd June 1878.

Your No. 584 of 4th February. Question of legislation for relief of indebted agriculturists under immediate and serious consideration. Result will be communicated shortly.

No. 23.

Office Memorandum No. 330, dated Simla, the 10th June 1878.

From the Government of Bombay, No. 308, dated 19th January 1878, and enclosure.
From ditto ditto, No. 584, dated the 4th February 1878.

The undersigned is directed to forward copy of the papers marginally noted, and to request that the Legislative Department will be good enough to prepare, as soon as possible, a short Bill—to extend only, to the Districts of Poona, Satara, Sholapur and Ahmednagar, but to be capable of extension, with the previous sanction of the Governor General in Council, either wholly or in part, to any other local area within the Bombay Presidency, to come into force on the passing thereof to provide—

(1) that every ryot shall have the right at any time of coming forward and claiming the benefits conferred by the Insolvency Court in the same manner as the citizens of Bombay and Calcutta now possess the right of claiming this;

(2) that no ryotwari land in the position of a ryot shall be liable to sale under any process of any court unless it has been specifically pledged by him in a registered bond; and

(3) that all bonds relating to land, without reference to its value, shall require registration.

2. The Bill will require certain saving clauses in regard to bonds executed before the passing of the Act. The exact nature of these clauses will best be determined by the Legislative Department in accordance with precedents which may exist in that Department; but it is requested that this Department may be consulted in regard to them after they have been drafted. It will probably also be necessary to assign a definite period within which all existing bonds, the registration of which was not previously compulsory, must now be registered.

A. O. HUME,

Secy. to the Govt. of India, Dept. of Revenue, Agriculture and Commerce.

To the Legislative Department.

Office Memorandum No. 966, dated Simla, the 22nd June 1878. No. 24.

The undersigned is directed to forward herewith to the Revenue, Agriculture and Commerce Department, with reference to the twenty-third of the Rules and Orders for the transaction of business in Council, a draft Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay (together with the Statements of Objects and Reasons prepared in accordance with the instructions conveyed in that Department's Office memorandum No. 330 L. R.—S., dated the 10th instant.

2. Doubts have been felt in this Department as to—

(*a*) whether the limitation of Section 3 to "land-paying revenue to the Government and belonging to any person earning his livelihood wholly or principally by agriculture" is in accordance with the views of the Revenue, Agriculture and Commerce Department;

(*b*) whether the proviso to Section 3 is right, or whether the land should be protected from sale even in cases of insolvency;

(*c*) whether it is in accordance with the views of the Revenue, Agriculture and Commerce Department to make Section 4 applicable to all revenue-paying land; and

(*d*) whether it is safe to make Section 4 applicable to transactions entered into before the passing of the Act.

3. As regards this last point, it will be observed that the second clause of Section 4 provides for the registration of instruments executed before the passing of the Act, so that there can be no great hardship when the transaction has been effected in writing; but if in the districts to which the Bill applies oral mortgages have been usual, some modification of the section will apparently be necessary.

4. It should be stated that the phrase "ryotwari land" used in the Office memorandum above mentioned has been understood here in the sense in which it is used in paragraph 6 (*c*) of the Bombay Government's letter No. 308, dated 19th January 1878, *viz.*, as meaning land paying revenue to the Government.

5. The power of extending the enactment to any part of the Presidency of Bombay has, it will be remembered, been omitted in consequence of an unofficial communication which took place between this Department and the Revenue, Agriculture and Commerce Department after the Office memorandum of the Revenue, Agriculture and Commerce Department was written.

D. FITZPATRICK,
Secy. to the Govt. of India, Legislative Dept.

To the Dept. of Rev., Agri. and Commerce.

A Bill for the relief of indebted Agriculturists in certain parts of the Presidency of Bombay. No. 25.

Preamble.

Whereas it is expedient to relieve and protect indebted agriculturists in certain parts of the Presidency of Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bombay Indebted Agriculturists Relief Act, 1878."

Local extent. Commencement.

It shall extend only to the Districts of Poona, Satara, Sholapur and Ahmednagar; and shall come into force on the   day of   1878.

Indebted agriculturist may be declared insolvent.

2. Any person earning his livelihood wholly or principally by agriculture who is in insolvent circumstances, and who desires to be declared an insolvent, may apply in writing in that behalf to any Court empowered to entertain applications under Section 344 of the Code of Civil Procedure.

Every application under this section shall be made as nearly as may be in manner prescribed by Sections 345 and 346 of the said Code, and shall be dealt with as nearly as may be as if it were an application under Section 344 of the same.

Exemption from attachment and sale of revenue-paying land belonging to agriculturist.

3. No land paying revenue to the Government which belongs to any person earning his livelihood wholly or principally by agriculture shall be attached or sold in execution of a decree.

Proviso.

Provided that nothing herein contained shall prevent the sale of any land by a receiver appointed in any insolvency proceedings or the enforcement of any mortgage, lien or charge of or upon any land.

Mortgages, etc., of revenue-paying land to be valid only when written and registered.

4. No mortgage, lien or charge of or upon any land paying revenue to the Government shall be valid unless it is created by an instrument in writing signed by the person creating such mortgage, lien or charge, and every instrument creating any such mortgage, lien or charge shall be deemed to be an instrument required to be registered by Section 17 of the Indian Registration Act, 1877.

Any such instrument executed before the passing of this Act, and which, but for the passing of this Act, would not have been required to be registered, may notwithstanding anything contained in the said Indian Registration Act, 1877, be registered if presented for that purpose to the proper officer within six months from the passing of this Act.

No. 26. From A. O. Hume, Esq., c.b., Secy. to the Government of India, Department of Revenue, Agriculture and Commerce, to the Chief Secretary to the Government of Bombay,—No. 404, dated 1st July 1878.

In continuation of my telegram of the 3rd ultimo, I am now directed to reply to Mr. Ravenscroft's letters Nos. 308 and 584, dated respectively the 19th January and the 4th February last, on the subject of the measures necessary for the relief of indebted agriculturists in certain parts of the Bombay Presidency.

2. His Excellency the Governor in Council, in paragraph 4 of the first of these letters, reviewing the situation disclosed by the Report of the Deccan Riots Commission of 1875, observes that the condition of the ryot has been in several respects materially improved by the new Code of Civil Procedure, which came into force on the 1st October last: "By it, a ryot's necessaries will be protected from sale for debt; his land, instead of being inconsiderately sold in execution of a decree, will be brought under judicious management by the revenue officers; and he will be protected from arrest on a decree if he declares himsef to the Court as an insolvent. And if his total debt does not exceed Rs. 200, he may be absolved from further liability." His Excellency in Council, however, considers that these improvements leave untouched many of the more important causes of the depressed condition of the people, and that further and special measures are necessary to enable these to be dealt with satisfactorily.

3. To this end legislation is proposed, to include provision for the following objects :—

(*a*) To compel the courts, in cases where agriculturists are sued on bonds or for money due, to go behind the terms of the bond, to enquire into the justice of the claim, and to take into consideration the equity of the interest charged, even though it may have been distinctly agreed to by the defendant;

(*b*) To make it illegal to award compound interest, or more interest than the amount of the principal found to be due;

(*c*) To limit the liability of a ryot for debts incurred by his ancestors;

(*d*) To empower a ryot at any time to claim the benefit of the Insolvency Court instead of, as at present, only when a decree has been passed against him;

(*e*) To protect a ryot's ryotwari land from sale for debt except when it has been specifically pledged by him in a bond duly registered, and to require that all bonds for land shall be registered, whatever the value of the land pledged.

4. A Bill is forwarded with the letter to provide for these objects, and His Excellency in Council asks the sanction of the Government of India to its introduction in the Bombay Legislative Council. The Bill appears to be in general accordance with the principles stated in the letter; but the Government of India observe, with reference to head (*d*) mentioned above, that the Bill not only empowers an indebted agriculturist to apply for a declaration of insolvency, but also any creditor of such agriculturist to whom not less than Rs. 100 is owing, and that provision for the compulsory registration of mortgages of land [head (*e*)] does not appear to be included in the draft.

5. In the second letter under acknowledgment, the Governor in Council, referring to doubts which have been expressed regarding the power of the local legislature to deal with the subject, asks that, should the Government of India concur in these doubts, early steps may be taken for the introduction of the Bill into the Council of the Governor General for making laws and regulations.

6. The Government of India, I am to say, share in these doubts; and consider that while some of the objects sought to be attained by the Bill might, in their opinion, be secured by local legislation, the Bill, as a whole, could not be so dealt with, inasmuch as it affects several of the provisions of the Civil Procedure Code and other Acts of the Governor General's Council, which the local legislature is precluded from affecting by the provisions of the Indian Councils' Act. His Excellency in Council has therefore decided that legislation to carry out certain provisions of the draft Bill shall at once be taken in hand in the Legislative Council of India.

7. I am now to explain why it appears to the Government of India unnecessary to include in this legislation all the provisions enumerated in Mr. Ravenscroft's letters of the 19th January.

8. The action proposed under head (*a*) is considered by the Government of Bombay to be necessary, because "at present, if a bond duly executed and attested is presented, the Court must pass a decree." This appears to the Governor General in Council to be hardly an accurate statement of the case. On this subject I am to invite attention to the decision of the High Court of Bombay quoted in clause 5, paragraph 13 of Mr. Ravenscroft's letter No. 2202, dated the 6th April 1877. His Excellency in Council believes that it is the established practice of Courts in India to require, in the case of contracts, satisfactory proof that consideration has been actually received according to the terms of the contract, though mere denial of the receipt of the consideration stated is not in all cases sufficient to cast upon the plaintiff the burden of proving its payment.* Chief Justice Peacock, in a case† reported in 3 Bengal Law Reports, O. C. J. 130, held that a Hindu, who had given a promissory note for Rs. 1,200, of which he had received only Rs. 500, could only be compelled to pay as principal what he had received in cash. Mr. Justice Bayley, one of the Judges of the Bombay High Court, in a recent minute dated 22nd February 1878, which is now before the Government of India, states that he has always acted on that case, and invariably refused to give in favour of a money-lender a decree for a larger amount of principal than the defendant has received from him. Lastly, I am to invite attention to Bombay Regulation V of 1827, section 9, which is still in force, and provides that written acknowledgments of debt in any shape shall not be held conclusive in a court of law as to the amount, if the defendants show that a full consideration has not been received."

* See a decision of the Privy Council, reported in 2 Bengal Law Reports, 111 and 122, Raja Sahib Prahlad Sen *v.* Babu Budhu Singh.

† Ram Lal Mookerjee *v.* Haran Chunder Dhar.

9. The principles just stated would, it seems to the Governor General in Council, suffice to secure the objects contemplated by the Government of Bombay under head (*a*) in all cases in which there is any defence. It may be, however, that His Excellency the Governor in Council contemplates that even in cases where no defence is set up, the Court shall be bound to cast upon the plaintiff the burden of proving the actual receipt of the consideration stated in the bond and the absence of fraud. If this be the intention, I am to say that the Governor General in Council doubts the expediency of legislation in this direction at present. It would cast upon the Courts an amount of work which it seems very questionable whether they could, as at present constituted, get through: it would afford many opportunities for fraud and evasion to dishonest debtors, and might thus be an incentive to reckless borrowing. and finally, it would conflict with the provisions of section 102 of the Evidence Act regarding the burden of proof.

10. Respecting head (*b*), I am also to invite attention to the decision of Chief Justice Peacock in the case referred to in paragraph 8 of this letter. It will be seen that he held that Act XXVIII of 1855 did not repeal the Hindu Laws as to the rate of interest. Such rate is, in the case of Hindus, governed by the strict rules of Hindu Law, which are notoriously in favour of the debtor. The Bombay High Court, moreover, in a series of cases cited at page 360 of Appendix B to the Report of the Deccan Riots Commission, have also held that that Act does not abrogate the rule of Hindu Law called *Damdupat*, whereby, amongst Hindus, the creditor cannot at any one time recover as interest more than an amount equal to the principal. I am also to solicit a reference to the opinion expressed by His Excellency the late Governor

of Bombay in Council in paragraph 13, clause 5, of Mr. Ravenscroft's letter No. 2202, dated the 6th April 1877, which was unfavourable to the grant of discretionary powers to Courts to reduce the rate of interest.

11. This matter, however, is one which can be dealt with by the local Legislative Council, should His Excellency the Governor in Council on consideration of these remarks still think further legislation expedient; such legislation would not be beyond the powers of His Excellency's Council, inasmuch as it would not affect Acts of the Legislative Council of India passed subsequently to the date on which the Indian Councils' Act came into force.

12. The Government of India observe that no reference has been made, in the remarks in Mr. Ravenscroft's letter of the 19th January last under head (*c*), to Act VII of 1866 (Bombay Council). It seems possible that the application of that Act to the question of the liability of a ryot for his ancestor's debts may have been overlooked. The Act extends only to Hindus, and it may be that it does not even in their case secure to the ryots the amount of protection which His Excellency the Governor in Council considers necessary. If, therefore His Excellency in Council should be of opinion that further legislation on the subject is necessary to extend the scope of the protection afforded by the Act, such legislation would also seem to be within the competence of the local Legislative Council.

13. It will be gathered from the above remarks that, of the five points on which legislation is recommended by the Government of Bombay, the first three seem to the Governor General in Council to be altogether or in part provided for by the existing law. His Excellency in Council does not therefore think that it is necessary to include them in the measure which, as will be seen below, he proposes to introduce into the Legislative Council of the Governor General. I am, however, to suggest that, as it would seem possible that some of the *Mufussil* Courts in the Bombay Presidency may not be fully acquainted with the existing law, or may have overlooked its provisions, the High Court of Bombay should be moved by the Governor in Council to issue a circular to those courts calling attention to the matter.

14. The other points, *viz.* :—

(1) empowering a ryot at any time to claim the benefit of the Insolvent Court:

(2) securing ryotwari land from sale in execution of any process unless it has been specifically pledged in a registered bond; and

(3) requiring all bonds relating to land, without reference to its value, to be registered—

will be provided for in a Bill which will be at once introduced into the Legislative Council of the Governor General. The scope of the Bill will be limited to the districts named* by the Government of Bombay.

* Poona. Satara. | Sholapur. Ahmednagar.

15. As will be seen from the draft Bill, of which I am directed to forward a copy for His Excellency the Governor in Council's consideration, it has not been thought necessary to insert any provision enabling the Government to extend the Act to any other portions of the Bombay Presidency by notification. *Primâ facie*, there would not appear to be any great object in taking such a power, and the more extended application of it might rightly be reserved to legislation; but, on this subject, the Government of India would be glad to learn the views of His Excellency in Council.

16. Certain other points in the draft Bill seem to require special consideration—

1st.—Is the limitation of Section 3 to "land paying revenue to Government, and belonging to any person earning his livelihood wholly or principally by agriculture," correct? Or would the Bombay Government prefer its extension to all land paying revenue to Government without reference to the status or character of the holders, and, if so, why?

2nd.—Is the proviso in Section 3, permitting sales of land by receivers in insolvency proceedings, correct? or is it essential to the success or the contemplated measure that the land should be protected from sale even in insolvency cases?

3rd.—Is it necessary that Section 4 should apply to all revenue-paying land? or would it not be more in harmony with the special scope of the Act to restrict its application, as that of Section 3 is restricted?

4th.—Is it quite safe, and is it essential to make Section 4 applicable to transactions entered into before the passing of the Act? The section allows six months' grace in such cases, so that, where transactions have been effected *in writing,* no great hardships can result; but if in any of the districts to which this proposed Act will extend, *oral* mortgages have been customary (and this the Government of Bombay will doubtless ascertain) some modification of the section may be necessary.

17. In regard to all these points, as well as in regard to the provisions of the draft Bill generally, the Government of India will be glad if His Excellency the Governor in Council will favour them with his opinion at as early a date as possible, in order that there may be no delay in proceeding with the Bill.

18. In conclusion, I am to observe that the first and last of the three points mentioned in the 14th paragraph will demand the consideration of the Government of Bombay with reference to the establishment necessary to provide for the proper execution of the Bill when it becomes law. The limitations placed upon the action of the courts in dealing with insolvency in the new Civil Procedure Code were thought necessary, because it was believed that the judicial machinery in the *Mufassil* was not sufficiently strong to work a complete insolvency law. Should the Bill when it becomes law make any considerable addition to the insolvency business of the courts, it may be necessary to provide specially for its working. Similarly, if the provision making the registration of all bonds relating to land compulsory entails much additional work in registration offices, or if it is found that these offices are not sufficiently numerous, or are situated at too great distances from one another, it may be necessary to establish rural registration offices, a measure which, as the Governor in Council is aware, has been found of great advantage in the Lower Provinces of Bengal. This subject is discussed in clause 6, paragraph 13, of Mr. Ravenscroft's letter of the 6th April 1877.

19. I am to express the regret of the Government of India at the delay which has occurred in replying to this important reference, and the hope of the Governor General in Council that the Government of Bombay will consider the action about to be taken a satisfactory method of dealing with the questions at issue.

From the Honourable E. W. RAVENSCROFT, C.S.I., Chief Secretary to the Government of Bombay, to the Secretary to the Government of India, Department of Revenue, Agriculture and Commerce,—No. 4579, dated Bombay Castle, the 5th September 1878. **No. 27.**

I am directed to acknowledge receipt of your letter No. 404, dated 1st July last, forwarding copy of a draft Bill which His Excellency the Governor General in Council proposes to introduce into the Legislative Council of India in substitution for the "Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay" submitted with my letter No. 308, dated 19th January 1878, and inviting the opinion of His Excellency the Governor in Council upon its provisions and upon sundry other points connected with its subject-matter.

2. In reply I am desired to convey the thanks of the Government of Bombay to the Government of India for their ready acknowledgment of the need for legislation, and for the promptness with which it is proposed by them to take the necessary action in the matter, and to say that His Excellency the Governor in Council entirely concurs in the expediency of legislation in the direction suggested in the draft Bill forwarded with your letter, and rejoices at the general concurrence of opinion which exists regarding the measures which the evils to be remedied call for.

3. But it appears to His Excellency the Governor in Council that unless the measure, which may be adopted are sufficiently complete to give a reasonable hope of their securing success, it is to be feared that legislation will raise anticipations which cannot be realized, and may detract from the credit of measures which, though good in themselves, are yet not calculated to meet all the evils for which Government have to provide. In proceeding, therefore, to discuss the various points raised in your letter under reply, and the requirements of the proposed enactment generally, His Excellency the Governor in Council's desire is to obtain the consent of the Government of India to the enlargement of the scope of the draft Bill now received by rendering its provisions more complete.

4. In the first place then the most important of the measures which His Excellency the Governor in Council is anxious to see included in the Bill is that described in paragraph 3 of your letter as "head (*a*)," namely—

"(*a*) to compel the courts in cases where agriculturists are sued on bonds or for money due to go behind the terms of the bond, to inquire into the justice of the claim and to take into consideration the equity of the interest charged, even though it may have been distinctly agreed to by the defendant."

5. The Government of India's observations upon this proposal may be stated to be—

(1) that, so far as defended cases are concerned, the present state of the law renders it really unnecessary; and

(2) that as regards undefended cases its expediency is questionable.

6. Upon this matter I am directed to forward the accompanying copy of a Minute by His Excellency the Governor which has full concurrence of the other Members of this Government, and to state briefly that in the opinion of the Government of Bombay—

(*a*) it is not the present practice of the courts, at any rate in this Presidency, to require such proof as is really satisfactory that consideration has been actually received according to the terms of a written bond;

(*b*) the law in force in this Presidency also does not require the courts to insist upon the production of such proof by plaintiffs, but on the contrary expressly throws the burden of proving the negative upon defendants;

(*c*) a clear declaration of the intentions of the law is necessary to bring the practice of the courts of this Presidency into harmony, even with the view which is held alike by His Excellency the Governor General in Council and by this Government, that in defended cases the burden of proving receipt of the full consideration should be thrown strictly upon the plaintiffs;

(*d*) in cases in which the defendants are agriculturists such a declaration would, however, be in ufficient, as owing to their ignorance and poverty and the trouble, annoyance and loss of time involved in defending suits they do not care, or have not the prudence to defend suits even when they often might do so successfully; and

(*e*) it will not suffice merely to throw the burden of proof upon plaintiffs; it is still more necessary expressly to require the courts, when the defendants are agriculturists, to go behind the bonds, and not to rely upon the ordinary presumptions in favour of written matter, but to dispense fair justice as between man and man independently of the technicalities which have hitherto helped the money-lenders so effectually to ruin their debtors.

7. For these reasons I am to express the earnest conviction of His Excellency in Council that unless the proposed enactment should include provisions similar in effect to those contained in Sections 3 to 8 (inclusive) of the draft Bill submitted with my letter No. 308 of 19th January last, it will fail to touch the principal root of the evils which it is intended to remedy, though good so far as it goes, it will prove to be but a half-measure, and consequently will fall short of the expectations both of the Government which passes it and the people who may look to it to save them from some grave faults in the existing system of civil justice.

8. The inadequacy of the proposed extension of the insolvency law, without the simultaneous enactment of some such provisions as those to which I am adverting, has been very forcibly shown in the following passage of a report by the Remembrancer of Legal Affairs to this Government, which I am desired to quote:—

"10. If an insolvent law is to be introduced unaccompanied by any such provisions the ryot will not benefit much. He will be relieved from liability to imprisonment it is true, but except in the rare case of the aggregate amount of his scheduled debts not amounting to more than Rs. 200, 'his * property, whether previously or subsequently acquired,' will 'be liable to attachment and sale until the decrees against him held by the scheduled creditors are

* *Vide* Section 357 of the Civil Procedure Code.

fully satisfied or become incapable of being executed.' And if the creditors are only vigilant the decrees cannot become incapable of being executed for 12* years from the date on which they were passed. Now, when it is remembered that the ryot's land is only to be liable to attachment in execution, if it has been expressly hypothecated, and that under Section 266 of the Civil Procedure Code his implements, cattle, and his own and his wife's and children's necessary wearing apparel and the materials of his house and other buildings are all exempt from attachment, it will be seen that in nine cases out of ten an insolvent ryot will possess scarcely any property out of which his creditors can be satisfied. On the other hand, each of his creditors will do his best to swell out his accounts against him and to get a decree which will entitle him to as large a proportion of the insolvent's small available assets as possible, and if no rules are provided for limiting the creditor's claims, they will experience no difficulty under the law as it is at present in effecting their purpose.

* *Vide* Section 230, para. 4, of the Civil Procedure Code.

"11. This state of things will, I venture to think, not do much to improve that which it is sought to remedy. A country peopled by a mass of insolvent ryots whose very produce is not their own, and who are incapable of acquiring any property which will not be immediately seized and divided amongst a host of watchful creditors, will hardly fulfil the expectations which it is hoped to obtain by the present measures of relief.

* * * * * * *

"What is wanted is rather a means by which the demands of the creditor may be, at any time, easily ascertained and fixed within reasonable limits, and that the debtor should be encouraged to pay the amount so ascertained and fixed, if possible, without being declared an insolvent, and that even when it is necessary for him to take the benefit of the Insolvent Act, he should still only be held liable for the payment of what is reasonable."

9. The provisions of Sections 3 to 8 (inclusive) of the draft Bill submitted with my letter No. 308, to which the foregoing remarks relate, include the remedies proposed by this Government, which fall under the heads (*b*) and (*c*), as described in para. 3 of your letter under reply, namely—

"(*b*) To make it illegal to award compound interest, or more interest than the amount of the principal found to be due.

"(*c*) To limit the liability of a ryot for debts incurred by his ancestors."

To such of the provisions as are comprised in these two heads, His Excellency the Governor General in Council is understood not to object, but to propose that such action as this Government may, on further consideration, deem necessary with respect thereto shall be taken in the local Legislature. Acting upon this permission the Governor in Council will by an early date introduce a Bill into his Legislative Council for the two objects above-mentioned.

10. Adverting to para. 10 of your letter under reply regarding the necessity for interfering with the existing law as to interest, I am to state, with regard to the rule of *dám dupat*, that the Governor in Council fully recognizes the value of that rule as far as it goes, and that His Excellency's object is in fact (1) to make it generally applicable to *all* classes of agriculturists instead of its applying, as at present, only when the defendant is a Hindu, and (2) to extend the rule itself by enacting that the amount of interest to be received by the creditor from any agriculturist debtor shall not exceed *in the aggregate* the amount of the principal instead of thus restricting the amount of interest so recoverable at any one time merely.

11. The ruling of Chief Justice Peacock to the effect that Act XXVIII of 1855 did not repeal the Hindue law as to the rate of interest does not appear to this Government to be of any particular benefit to the ryot. The provisions of the written Hindu Code as to interest are shown by the Chief Justice himself in the judgment* quoted to be far from precise, and his Excellency the Governor in Council is informed, and believes, that, as a matter of fact, this so-called "law" is not actually operative in this Presidency, and that amongst Hindus, as amongst other people, the rate of interest is

*Bani Lal Mukarji *v.* Haran Chundra Dhar, 3 Bengal Law Reports, P. C. I., 130.

generally determined by whatever the rapacity of the lender will be satisfied with and the urgency of the borrower's need will induce him to consent to. In the few instances in which this is not the case the rate is settled by customs rather than by reference to the tenets of the written Hindu law.

12. The history of the past, at any rate, satisfies His Excellency in Council that there is no protection for the ryots from exhorbitant interest in the rules of Hindu law, and he is very strongly of opinion that amongst other measures necessary for regulating the liabilities of indebted agriculturists it is most essential that the courts should be empowered to "take into consideration the equity of the interest charged even through," to use the word of your letter, "it may have been distinctly agreed to by the defendant." Ryots in their ignorance and helpnessness will generally agree to any rate that may be asked of them, trusting to the future to obtain easier terms, or to evade payment altogether; and where the object of the Judge is simply to ascertain what is reasonably due to the creditor, the agreement of the ryot cannot be regarded as of any importance. In a large number of cases indeed it is believed that the ryot signs the bond without even knowing what rate of interest he has signed for or what other terms are contained in it.

13. The Governor in Council is aware, as pointed out in your 10th paragraph, that in my letter No. 2202, dated 6th April 1877, His Excellency the late Governor of Bombay in Council expressed an opinion which was unfavourable to the grant of discretionary powers to courts to reduce the rate of interest. But when the settlement of the amount both of principal and interest is left (as is intended by the provisions of the draft Bill submitted with my letter No. 308, and as is still recommended by the Governor in Council) to the discretion of the courts, or of the arbitrators to be appointed by them, this objection loses its force, and it would obviously be useless to empower the courts to deal with the principal and not also with the interest.

14. With reference to your 12th paragraph the provisions of Bombay Act VII of 1866 were not overlooked by this Government, but that law was found even in the case of Hindus to whom alone it applies to afford no real protection to the ryot. With that Act, as one generally applicable to all Hindus, whether agriculturists or not, His Excellency the Governor in Council does not wish to interfere. But the special provisions which he has proposed for limiting the liability of a ryot for debts incurred by his ancestors go considerably further than does that Act, and these it is proposed should be applicable to all agriculturists within the districts to which the Act will extend, whether they be Hindus or not. The principal object contemplated by these provisions is to prevent the money-lenders from turning the interest on an old debt into a permanent annuity payable by the debtor from generation to generation and thus keeping the ryots in a perpetual state of indebtedness and serfdom.

15. To recapitulate, then the Governor in Council attaches the greatest importance to the provisions included under heads (*a*), (*b*) and (*c*) in your letter, and contained in sections 3 to 8 (inclusive) of the draft Bill submitted with my letter No. 308, and is convinced that no measure for the relief of indebted agriculturists will be really adequate unless some such provisions form part of it. His Excellency in Council is willing to introduce a bill by an early date into his Legislative Council embodying the requisite provisions under heads (*b*) and (*c*).

16. The other points on which this Government suggested legislation are included in the heads (*d*) and (*e*) in your letter under reply, and have been provided for in the draft Bill which the Government of India propose to introduce in the Legislative Council of the Governor General. These points, as more explicitly stated in your 14th paragraph, are—

(1) empowering a ryot at any time to claim the benefit of the Insolvent Act.

(2) securing ryotwari land from sale in execution of any process unless it has been specifically pledged in a registered bond; and

(3) requiring all bonds relating to land, without reference to its value, to be registered.

17. The Governor in Council, while approving the proposed legislation on these three points, does yet, with a view to improving the details of the Bill so as to secure its more effectual operation, desire to offer the following suggestions, most of which, I am to say, were reserved by this Government for consideration when its own Bill should be before the Select Committee, under the impression that the local Legislative Council would have power to undertake the necessary legislation:

(1) With respect to the insolvency provisions the Governor in Council deems it desirable that any creditor of an agriculturist to whom not less than Rs. 100 is

owing should be empowered to apply for a declaration of his debtor's insolvency as well as the debtor himself. This point, though not expressly mentioned in my letter No. 308, was provided for, with the concurrence of this Government, in the draft Bill submitted with that letter, and it is thought to be but equitable that the creditors should have equal rights with the debtors. The provision inserted in Section 28 of the above Bill entitling an insolvent agriculturist to an absolute discharge from his debts if they were not incurred by himself, as well as if they do not exceed in the aggregate Rs. 200, is also thought to be a desirable one. But the Governor in Council will not press these proposed additions to section 2 of the Government of India's draft Bill if that Government should not concur in the necessity for them.

(2) The provisions against the sale of land in execution of decrees should, His Excellency in Council thinks, extend to all land belonging to agriculturists, whether it pays revenue or not. A very large number of agricultural holdings in this Presidency are entirely exempt from land revenue, and the political danger of depriving an agricultural population of its land is more serious when it pays no revenue to Government than when it is fully assessed. The land on which the ryot's houses stand is also, as a rule, not subject to payment of revenue, and it is desirable to include it in the exemption from liability to seizure in execution.

(3) The proposal embodied in Section 4 of the Government of India's draft Bill for making the compulsory clauses of the Registration Act applicable to *all* instruments relating to land, irrespectively of its value, might, his Excellency in Council thinks, be usefully extended so as to require the execution and registration of all instruments to which agriculturists are parties before a public notary in the manner proposed by the committee on the Deccan riots at page 119 of their report. Legislation in this direction was, as you have pointed out, approved by His Excellency the late Governor in Council in clause (6) of paragraph 13 of my letter No. 2202, dated 6th April 1877, and it is suggested that some section similar in effect to those which will be found in the appendix to this letter should be substituted for section 4 of the Government of India's draft Bill.

18. With respect to the local extent of the Bill, I am directed to state that his Excellency the Governor in Council would prefer that power should be taken in it to extend its operation by order of Government to any part of the Presidency. The circumstances of the ryots in some other places in the Presidency may be found to resemble those of the ryots in the four districts to which it is proposed to apply the Bill in the first instance, and although the peculiar condition of these latter districts justifies the adoption of special tentative measures for the protection of the ryots in them, there appears to His Excellency in Council to be no good reason why they should be especially favoured, or why Government should not assure the ryots in the rest of the Presidency of their desire to extend the benefits of the measure to them also, if its operation in the four districts of the Deccan should, after some experience, promise to be successful.

19. To the questions raised in your paragraph 16 I am directed to reply as follows :—

1st—The object of the Bill being to protect *bonâ fide* agriculturists only, this Government would desire to exempt only the land of agriculturists from liability to attachment in execution ; but as I have already explained, it would wish to see *all* land of agriculturists thus protected and not merely revenue-paying land.

2nd—The proviso to Section 3 of the Government of India's draft Bill should, it is thought, be omitted, the intention of His Excellency the Governor in Council being, as shown by Section 26 of the draft Bill, submitted with my letter No. 308, that the exemption of land from liability to sale should continue *after* as well as before the debtor becomes insolvent. The protection to the ryot will otherwise be but very imperfect, and the advantage to him of being declared insolvent will be greatly reduced.

3rd—The scope of Section 4 should, in the opinion of this Government, be restricted in its application as that of Section 3 is restricted, namely, it should apply to agriculturists and to instruments affecting their land only.

4th—Oral mortgages are not customary in the Deccan of this Presidency, and there would be no hardship in letting the 2nd paragraph of Section 4 stand as it is.

20. With reference to paragraph 18 of your letter I am to state that His Excellency the Governor in Council will be prepared when the Bill becomes law, to make such arrangements as shall from time to time appear necessary for increase of establishment, whether in the Judicial or Registration Department, in consequence of the additional duties devolving upon those Departments. If these arrangements should involve some increase of expenditure, as it is probable they will, this Government will use its best endeavours to meet the same, feeling fully assured that the revenues could not be more legitimately or wisely employed than in endeavouring to secure the happiness and prosperity of a loyal and contented peasantry.

21. In conclusion the Government of Bombay accept the Bill of the Government of India so far as the Bill goes, and will proceed to legislate locally on the points suggested by the Government of India—being thankful to see even this much of improvement introduced, although it falls considerably short of what is desired. But for the reasons assigned in these papers, the Government of Bombay earnestly request that the additional provisions now recommended may be allowed.

No. 28. *Minute by the Governor of Bombay, dated 30th August 1878.*

By our despatches of the 19th January and the 4th February last we submitted to the Government of India a draft Bill for the relief of the indebted ryots in certain districts of the Deccan, together with Minutes and papers relating thereto : among which was a Minute of my own, dated 12th November last.

2. By a despatch dated the 1st July last, the Government of India send for our opinion a Bill which they propose to be substituted for our Bill, and which we are invited to accept as a satisfactory mode of dealing with the questions at issue.

3. While thankfully admitting the advantages proposed to be given to the ryots by the Bill of the Government of India, I am obliged to represent that this Bill is not sufficient to fulfil the object which the Government of Bombay had in view when proposing legislation, and therefore cannot be regarded by us as a satisfactory mode of dealing with the questions at issue. In general terms it must be described as omitting the most essential of the several provisions which we devised for the protection of the ryots, and therefore as taking some of the heart kernel and substance out of our measure. I am sure, therefore, that my Honourable Colleagues will concur with me in submitting a further representation to the Government of India on the subject.

4. Our proposals are justly summarized in paragraph 3 of the despatch of Government of India of 1st July, thus—

(*a*) to compel the courts, in cases where agriculturists are sued on bonds or for money due to go behind the terms of the bond, to enquire into the justice of the claims, and to take into consideration the equity of the interest charged, even though it may have been distinctly agreed to by the defendant;

(*b*) to make it illegal to award compound interest, or more interest than the amount of the principal found to be due;

(*c*) to limit the liability of a ryot for debts incurred by his ancestors;

(*d*) to empower a ryot at any time to claim the benefit of the Insolvency Court instead of, as at present, only when a decree has been passed against him; and

(*e*) to protect a ryot's ryotwari land from sale for debt, except when it has been specifically pledged by him in a bond duly registered, and to require that all bonds for land shall be registered, whatever the value of the land pledged.

5. As regards (*a*), the first of the points, the Government of India do not agree to any fresh legislation; as regards (*b*) and (*c*), the second and third points, they consider that the local legislature of this Presidency may make provision if it sees fit; and as regard (*d*) and (*e*), the fourth and fifth points, they embody proposals in their Bill.

6. We may express our concurrence in this bill, so far as it goes, as fully providing for our fourth and fifth points. We may declare our willingness to immediately introduce into our local legislature a Bill to provide for (*b*) and (*c*), the second and third points. But on the

first point (*a*), we must, I submit, state our regret at its omission from the present legislation and make our earnest request that it may be included therein.

7. To recapitulate this, the most important point of all is stated by the Government of India (as seen above) thus: "To compel the court in cases where agriculturists are sued on bonds or for money due to go behind the terms of the bond, to enquire into the justice of the claim, and to take into consideration the equity of the interest charged, even though it may have been distinctly agreed to by the defendant." In my Minute of the 12th November last, paragraph 13, it is stated thus—

"Firstly, I think that the civil courts should be obliged to examine the merits of the debt for which they are asked to pass a decree. At present, if a bond duly executed and attested, is presented, the court must pass a decree, and the ryots seeing the hopelessness of contention seldom appear in order to put in any defence, and allow the decree to be passed against them *ex-parte*. But the bond may be utterly unjust—indeed, generally is more or less unjust. A fraction of it only consists of principal, the rest is all made up of interest. The bond itself is by no means the original one, but has been renewed three or four times; the sum total having been largely augmented at each renewal. Thus, for example, ten rupees borrowed mount up after a few years to an ostensible debt of a hundred rupees, and so on."

8. In our draft Bill it is stated thus—

"In any suit brought for the recovery of money alleged to be payable on account of money lent, it shall be incumbent on the court in which such suit is instituted to ascertain and determine whether the defendant, or any one of the defendants, not being a surety merely of the actual debtor is an agriculturist.

"Whenever a court of first instance determines, under this section or under any other sections of this Act, that any person is, or is not, an agriculturist, its decision on such points shall be final.

"If the court's decision under the last preceding section is in the affirmative, it shall be incumbent on it to ascertain the actual amount of money lent.

"For this purpose the court shall—

"(*a*) require the plaintiff to prove the origin of the debt, and [the nature of each subsequent transaction, if any, in respect thereof]; and

"(*b*) if any written acknowledgment of debt is relied on by the plaintiff, require him to prove to its satisfaction that the whole of the amount therein named was actually advanced to the debtor.

"If in any case the circumstances are, in the opinion of the court, such as to satisfy the court that some money has been lent, but the actual nature or extent of the transaction between the parties is doubtful, it shall be competent to the court to determine the amount of money lent upon an equitable estimate with reference to such considerations as the following, namely—

"(*a*) the means and position of the lender;

"(*b*) the means and position of the borrower;

"(*c*) the amount of credit likely to have been given to the borrower by a person advancing money to him with the *bonâ fide* intention that it should be repaid with reasonable interest within a reasonable period; and

"(*d*) the occasion on which the money was borrowed and the amount likely to have been needed by a person in the borrower's station of life on such an occasion."

9. The point (*a*) as set forth in the foregoing quotations is the one upon which out of all our several proposals we lay most stress. The Government of India remark that our statement that "at present if a bond duly executed and attested is presented the court must pass a decree" appears to be hardly an accurate statement of the case, and in support of their view refer us to several rulings of the superior courts cited in paragraph 8 of their despatch and to Bombay Regulation V of 1827, Section 9. They state that the principle contained in these rulings and in the above regulation seems to "suffice to secure the objects contemplated by the Government of Bombay under head (*a*) in all cases in which there is any defence," and that if it be our intention to cast upon the plaintiff the burden of proving the actual receipt of the consideration stated in the bond, and the absence of fraud in cases in which no defence is set up, they "doubt the expediency of legislation in this direction at present," and state

that "it would cast upon the courts an amount of work which it seems very questionable whether they could, as at present constituted, get through; it would afford many opportunities for fraud and evasion to dishonest debtors, and might thus be an incentive to reckless borrowing, and finally it would conflict with the provisions of Section 102 of the Evidence Act regarding the burden of proof.'

10. Our reply in the first place is that, although our object may in some remote degree be indirectly provided for in the existing law, yet the law sounds so uncertain a note on this particular subject; its purport has to be gathered by legal learning from so many scattered sources; its meaning is so doubtful to the class of persons by whom civil justice is dispensed in the interior of the country,—that practically it is wholly inoperative in inducing the courts to "go behind the bond"; that the practice really is, as described by us, namely "at present, if a bond duly executed and attested is presented, the court must pass a decree"; that this practice is not remediable by rulings which may or may not be held under all future circumstances to have the force of law; that the difficulty is sure to continue unless there be positive legislation to the contrary; that this practice is at the bottom of all the admitted evils which we are trying to remedy; and that therefore it must be modified by positive enactment about which there can be no mistake, and which will really be operative and effective in the administration of justice.

11. I will here quote some pertinent observations by our Legal Remembrancer, Mr. Naylor, C.S., an officer well-versed in the actual working of our laws in the interior of the country. He writes—

"Regarding point (*a*), the Government of India draw attention to certain rulings of the courts, and to Section 9, Bombay Regulation V of 1827, and state their opinion that the principles laid down in them suffice to secure the objects contemplated by this Government in all cases in which there is a defence, and express doubts as to the expediency of throwing the burden of proof on the plaintiffs in undefended cases, and suggest that the High Court be moved to issue a circular to the mofussil courts, calling attention to the existing law.

"The principles of the decisions and of the regulation to which reference is thus made are—

"(1) that 'inadequacy of consideration when found in conjunction with any other such circumstances, as suppression of true value of property, misrepresentation, fraud, surprise, oppression, urgent necessity for money, weakness of understanding, or even ignorance, is an ingredient which weighs powerfully with a court of equity in considering whether it should not set aside contracts, or refuse to decree specific performance of them'—(III. By. H. C. R. 11 A. C. J.);

"(2) that 'it is the established practice of the courts in India, in cases of contract, to require satisfactory proof that consideration has been actually received according to the terms of the contract'—(II. Ben. L. R. III. P. C.);

"(3) that according to Hindu law the 'maker of a promissory note may show that there was no consideration,' and the holder of the note 'can recover no larger sum by way of principal than what the defendant received in cash' (III. Ben. L. R. 130. O. C. J.); and

"(4) that 'written acknowledgments of debt in any shape shall not be held conclusive in a court of law as to the amount, if the defendants show that a full consideration has not been received.' (Bom. Reg. V of 1827, Sec. 9).

"It is worthy of remark that the first of the above decisions was passed so long ago as 1866, and the second and third in 1869; whilst the regulation in which the fourth of the above principles is contained has been in force in this Presidency since 1827. All three of the decisions are to be found in the published reports and may be presumed to be as well known to the Judges and to the Bar as is, of course, the provision of Regulation V. Yet, notwithstanding this, it is an indisputable fact that for years passed thousands of decrees have been annually obtained by money-lenders against the ryots upon written acknowledgments for sums vastly in excess of the amounts ever actually lent by them.

"The causes of this state of things are not far to seek. With regard to the first decision, a court of equity will, no doubt, interfere in any of the instances enumerated, provided that a case for interference is clearly established; but the reason why so few suits arise in which the courts have the opportunity of exercising their powers of interference is simply that ordinary defendants find it too difficult and too expensive to prove their case. With respect to the

second and the third rulings a reference to II. Bengal L. R. 122 P. C. will show that in quoting in paragraph 32 of his Minute on the 'Negotiable Instruments Bill, 1877,' the 'head note' to the report of the Privy Council's decision, the Honourable Mr. Justice Bayley does not seem to have quite fully conveyed the purport of the Privy Council's judgment. The Sudder Court of Bengal had said that 'it is the established practice of the courts in India in cases of contract to require satisfactory proof that consideration has been actually received according to the terms of the contract,' but their Lordships of the Privy Council were of opinion that this proposition was 'too loosely expressed,' and that the cases cited by Counsel showed that 'if it is to be taken as affirming that the mere denial of the receipt of the consideration stated is, in all cases, sufficient to cast upon the party relying on the instrument the burthen of proving the payment of that consideration, it is too wide.'

"Both the last two decisions had reference specially to the law in force in Bengal. In this Presidency the matter is governed by the express provision of Section 9, Regulation V of 1827. The Honourable Mr. Justice Bayley would appear not to have had this provision in his mind (*vide* paragraph 19 of his Minute already referred to), and also not to have had his attention drawn to a very important reported decision of the High Court of Bombay with reference* to it. There was a suit in which the plaintiff sued to recover money on a written acknowledgment of indebtedness signed by the defendant in his account book, and the defendant pleaded want of consideration. The District Judge, following the Munsif, held that the plaintiff must 'aver that the contract was made on good consideration, and must make good that allegation by proof.' But the High Court was of opinion that the District Judge was in 'error in deciding that it lay upon the plaintiff to prove that consideration had been received. Regulation V of 1827, Section 9,' it said, 'is the law which governs the case, and this declares that it is incumbent on the defendant to show that a full consideration has not been received.' Thus it may be said that in this Presidency the presumption is in favour of a defendant having received the full consideration stated in any written acknowledgment signed by him until he can show by satisfactory proof that he has not received the full consideration. And as a matter of practice in all mofussil courts the merest tittle of evidence as to the execution of a written acknowledgment is deemed sufficient proof on which, in undefended cases, to pass a decree for the full amount named in such acknowledgement, and a very large number of such decrees are awarded daily; whilst in defended cases the mere denial by the defendant of the receipt of consideration is not deemed sufficient to throw the burden of proof on the plaintiff, for, if the plaintiff has *primâ facie* proved the execution of the written acknowledgment, the law is held to require the defendant to show that he has not received full consideration.

* V. By. H. C. R. 81 A. C. J.

"I think, therefore, what has been said by the Government of Bombay is correct, *viz.*, that 'at present if a bond duly executed and attested is presented, the court must pass a decree; and the ryots seeing the helplessness of contention seldom appear in order to put in any defence, but allow the decrees to be passed against them *ex-parte.*'

* * * * * *

"Whatever legislative action has been taken for relieving the estates of talukdars and others from incumbrances, the *first* step thought necessary has always been to provide for the reduction of the claims against them to reasonable amounts. This is also one of the chief objects of Section 3—9 of the Bombay Bill, and I do not think that the ryots will ever obtain any adequate relief without some such provisions. When the borrower is an 'agriculturist' he is one of a class which, it is now generally admitted, needs protection against the craftiness and superior acumen of the lenders. It is, therefore, fair in such cases and quite in accordance with the Honourable Mr. Justice Bayley's and the Government of India's views to throw the burden of proof, both in defended and undefended suits, on the lenders. The provision for the settlement of the amount due in cases of doubt upon equitable considerations and for a reference to arbitration will, if adopted, simply lead to the matters in dispute being determined very much in the same way and by the same means that they used to be settled before we introduced the complicated and unsuitable machinery of civil courts, and in the same way they would be settled now if no courts existed, with this difference that the intervention of the courts will secure equal justice to rich and to poor, and punctuality in the discharge of their functions by arbitrators. Another very great advantage of these provisions will be that they will in time regulate the mutual dealings of the money-lenders and ryots in a manner equally beneficial to both, and will restore their relations to what they were in the

olden time, when the money-lender knew that patience and considerate treatment of his debitor were the best, if not the only, means of getting his money from him."

12. Such is the opinion of our Legal Remembrancer as quoted above, in which I fully concur, and probably my Honourable Colleagues will concur also.

13. The gist of the matter then is this: The Deccan ryots were sued, still are sued, and will always be sued—unless there be fresh legislation—on bonds, which are, in many instances utterly unjust, though they may have been executed in due form. I mean by "unjust" repugnant to the sense of natural justice as between man and man, that moral sense which is present in the minds of all men whether educated or uneducated. The harassment therefrom arising drove these ryots in 1875 to commit agrarian outrages. A special commission shewed after elaborate inquiry that the essential injustice of the majority of the bonds was the root of the mischief. It is clear that this injustice would be demonstrated by any judicial inquiry which might be had regarding the origin, progress and circumstances of the debts. The existing law provides for judgment being given on the bonds only; that much is certain. Whether it provides for the court by its own inquiries going behind the bond is, as we submit, uncertain. The Government of India seems to consider that it does so provide, while apparently admitting that the provision is indirect rather than direct, and must be gathered from scattered rulings and clauses, rather than learnt from positively clear enactment. We submit with deference that the uncertainty is such that the courts practically do not go, can hardly be expected to go, and for the most part are sure not to go, behind the bond. Therefore we urge that there ought to be direct and positive legislation without which the existing evils must be perpetuated.

14. We may be encouraged to hope that the Government of India may be pleased to listen to our request, as they admit that the policy of the law is or ought to be, that the court should go behind the bond, the terms of their answer being that the law does, in some way, so provide already. But if we rejoin successfully that the provision is quite insufficient—is too uncertain to be of use,—then perhaps they will not object to make the law on the point clear by fresh legislation, to enforce a legal policy admitted to be right.

15. In other instances wherever the law is doubtful or inadequate on any point which ought to be clear, application is màde to the Legislature to cure the defect to remove the doubt. That exactly is what we venture to solicit from the Government of India in the present case, the gravity and importance of which may constitute an excuse for our importunity.

16. I must next advert to the apprehension apparently felt by the Government of India lest we should by our point (*a*) (causing the court to go behind the bond) unduly throw upon the plaintiff the burden of proof in cases where no defence is attempted.

17. At present the indebted ryots seldom set up any defence to these claims. They see the futility of disputing the bonds in court, whatever they may think of the injustice. Indeed they have no chance whatever before the law of setting up any defence which the courts could be expected to act upon. But if our point (*a*) be passed into law, they would set up defences fast enough, and this too with some chance of equitable success. In this event it is manifestly just and reasonable that the burden of proof should fall upon the plaintiffs. But in the absence of defence in cases of this sort it seems to me but right that the plaintiff should have to satisfy the court that the bond is a just one. I am unable to follow the reasoning (as above quoted) to the effect that to cast on the plaintiff the burden of proving receipt of the consideration, and the absence of fraud, would afford opportunities of evasion to dishonest debtors, and might thus be an incentive to reckless borrowing. Here we have educated, skilful, and wealthy creditors bringing claims against uneducated, unskilful, and poor debtors. Is it unfair to cast upon such creditors the burden of proving such claims to be just, even if undefended? On the contrary, does not fairness demand that such burden should be cast upon them? In fact, too, these ryot debtors are not, for the most part, evasive or dishonest debtors; they generally pay all, and much more than all, they really owe! It is this notorious circumstance which underlies the whole argument. The feeling of despair of ever getting out of the money-lenders' books makes them reckless in going on borrowing and borrowing, destroys all hope of independence. Our provisions will not be incentives to reckless borrowing, but will have the very reverse effect.

18. It may be, as apprehended by the Government of India, that our provisions will throw much work on the courts, more perhaps than they can conveniently get through. We are not indeed sure that this will be the result; but if it be so, then it ought not, in our judgment, to be allowed for a moment to prevent the measure being carried. If there were to be

some temporary increase of judicial establishments in four districts (the Bill will apply to four districts only and perhaps to some special localities in addition) we shall have to meet the cost from Provincial finance, which we are most willing to do. Even then the cost would probably be counterbalanced by increase of stamp revenue. But the net cost, if any, would be so inconsiderable that we could not venture to urge it in the face of the clear considerations of justice towards so important a class of our peasantry.

19. No doubt, as justly observed by the Government of India, our proposal will conflict with Section 102 of the Evidence Act regarding the burden of proof. But we submit that this *per se* is no prohibitive reason against our proposal. It certainly renders special legisation necessary, and therefore we have now to apply to the Legislature. The question is one of plain justice in these cases. Once that is determined, it becomes, we submit, the duty of the Legislature to frame a suitable law to supplement the general law.

20. We willingly acknowledge that either by the new Civil Procedure Code, or by the new Bill, an indebted ryot may, by applying for benefit of insolvency provisions, save himself from arrest and imprisonment; that his implements and agricultural cattle cannot be sold in execution of decree for debt, that his cottage, his land, his tenure and rights therein cannot be so sold either—all of which constitute beneficial improvement n his condition, for which he may indeed be grateful to the Legislature. We now receive permission to provide by local legislation that he shall not be unreasonably liable for ancestral debts, nor for an usurious rate of compound interest—all which constitutes a still further improvement, and a further cause of thankfulness.

21. Still we submit that despite these various provisions there may be, and will be, very many unjust bonds, to which the ryots will have to submit, unless the courts be not only empowered, but obliged, to go behind the bonds.

22. No exclusion of ancestral debts, no restriction of usurious interest, can prevent bonds being drawn up for a fictitious principal, or in acknowledgment of amounts which were never given by the creditor nor received by the debtor. And it is this concoction, this manipulation, as it were, of the principal, which is one of the strongest elements of injustice in these bonds, which injustice cannot possibly be remedied unless the courts be obliged to go behind the bonds.

23. Again, notwithstanding the humane provisions of the insolvency law, the merciful exemption of implements of land, and of cottages from sale, still there are many domestic articles which cannot be so exempted, which are of lesser importance, and more particularly the standing crop which is of great importance, as it supplies the food of the ryot and of his family. What arrangements an insolvent court would make for the subsistence of the ryot cannot exactly be foreseen. Possibly some arrangement would be made, though I am advised that the law does not compel the court to make any such arrangements. Still at the best the creditor would have a strong and tight grasp on the standing crop. I do not mention the garnered crop, because the creditor would never let it reach the stage of storage without his interposition. He would attack it while it was standing on the ground. He would compel the ryot to hypothecate it for the debt. He would leave to the ryot such subsistence as he (the creditor) deemed fit. The standing crop, being the only food supply of the ryot, is so essential a part of his little possessions that he must pay extreme deference to the creditor who is virtually master of that crop. Then comes the critical difficulty. The creditor presents to the ryot an old bond, which must be paid off immediately, or else renewed on exorbitant terms. At present these bonds, as already stated, are often flagrantly unjust. This injustice will, we hope, be mitigated by legislation restricting usurious interest—even then there will remain but too much scope for injustice in these bonds. Restrictions on usurious interest may be useful. Still they cannot prevent alterations in the amount of the principal as already shown. Thus the ryot must "stand and deliver" to the bond, under penalty of having his crop attached and his food supply interfered with. The temptation to renew on some exorbitant terms will be generally irresistible. The creditors are notoriously ingenious in framing terms which, though exorbitant, will yet fail to show on the face of them usurious interest or anything else that may be illegal, and will yet evade the just intentions of the law. Then simultaneously with renewal of the arrangement the old bond will be cancelled. The renewed bond will be executed, and will be *the* one formal valid bond, as between the parties, to be presented in court. And the ryot will from time to time be obliged to pay upon that, or else will have his crop attached, and his food supply suddenly stopped. If unfortunately that bond be unjust, as it but too often will be, then the ryot will be, to a con-

siderable extent, the victim of injustice. He will not be indeed so helplessly a victim as he has been heretofore, as he will avoid paying a demonstrably usurious interest, he will be able to save himself from imprisonment and his land from sale. But for fear of his crop and his food supply he will still be, to some considerable extent, a victim.

24. From this oppression he may be saved altogether, and his liability may be limited to its proper proportions, by our proposal (*a*)—obliging the courts to go behind the bonds. That, at all events, is the most effectual provision that can be devised. And if well and carefully worked, as it probably would be worked, under a vigilant administration, it will be effectual. If this be enacted, then the Legislature will have done all it can for the ryot in this matter. But if this be not enacted, then the law notwithstanding the other improvements will be incomplete for this purpose; the remedies will be only half measures, and much of the existing evils will remain. In that case we shall have undertaken legislation, and yet have fallen short of our aim, and have failed to effect our purpose. Perhaps even an impression might arise that the existing evils are irremediable, whereas all the time they are remediable as we believe. We have a fair ground for renewing our application to the Legislature, because we are asking not for the recognition of principles which the Government of India disallow, but for the enforcement of principles which they seem to allow.

25. For all these reasons I propose with the concurrence of my Honourable Colleagues to request earnestly the Government of India to allow the sections quoted in this Minute as taken from our Bill to form a part of their Bill.

26. In conclusion, while exposing certain evils and suggesting their remedy, I am far from implying either that the money-lender is altogether blameable or that the ryot is altogether pitiable. With all his faults, the money-lender is a useful man, and often gives credit when it is most needed. With all his sorrows, the ryot enjoys many of those advantages which peasants most value.

RICHARD TEMPLE.

No. 29.

SECTIONS TO BE SUBSTITUTED FOR SECTION 4 OF THE GOVERNMENT OF INDIA'S DRAFT BILL.

(*See paragraph 15, Clause 3, of accompanying letter.*)

Appointment of Public Notaries.

1. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Public Notaries.

Each such person shall be Public Notary for such local area as the Local Government shall prescribe.

Instruments to which an agriculturist is a party not to be deemed valid unless executed before a Public Notary.

2. No instrument to which an agriculturist is a party executed after the passing of this Act in any place in which this Act is in force shall be received in any Court of Justice, or at any persons having by law or consent of parties authority to receive evidence, as creating, modifying, transferring, or extinguishing, or purporting to create, modify, transfer, or extinguish any right or obligation.

or as evidence in any civil proceeding,

or shall be acted upon in any such court, or by any such person as aforesaid, or by any public officer.

unless such instrument is written by or under the superintendence of, and is attested by a Public Notary.

Instruments to be written by, or under the superintendence of, a Public Notary and executed in his presence.

3. When any persons, one or more of whom is an agriculturist, desire to execute any instrument, they shall present themselves before the Public Notary appointed by the Local Government for the area in which the said agriculturist, or any one of the said agriculturists resides, who after satisfying himself in such manner as he deems fit as to the identity of the parties, and receiving from them the prescribed fee, and the stamp, if any, which may be necessary, shall write the instrument, or cause the same to be written under his superintendence and require the parties to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall be attested by the Public Notary, and also, if any of the parties thereto is unable to read and write, by two respectable witnesses.

Registration of instruments by Public Notaries.

4. Every Public Notary shall keep a Register of instruments executed before him.

As soon as any instrument has been completely executed before a Public Notary, he shall make or cause a copy of it to be made, in his register. He shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the parties, if there be more than one.

Previous to delivery the original instrument and each such copy shall be endorsed under the Public Notary's signature, with the date of registration, the name and residence of the Public Notary, and the volume and page of the register in which the instrument has been registered.

Consideration to be fully stated in every instrument executed before a Public Notary.

5. In every instrument written by or under the superintendence of a Public Notary the amount and nature of the consideration shall be fully stated. If the instrument is to be executed in supersession, or partly in supersession, of previous instruments, such instruments shall be produced before the Public Notary and shall be fully described in the instrument to be executed, and shall be marked by the Public Notary, under his signature, for identification.

The Public Notary shall also endorse the instrument with a note, under his signature, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

Registration under this Act to be deemed equivalent to registration under the Indian Registration Act, 1877.

6. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Public Notary, but has been otherwise executed, shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

Penalty, if person not being a Public Notary writes any instrument.

7. Any person, not being a Public Notary, who writes any instrument which this Act requires to be executed before a Public Notary, otherwise than by direction and under the superintendence of a Public Notary, shall be punished for each such offence, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Exemption of instruments to which Government or any officer of Government is a party.

8. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party to be executed before a Public Notary.

Local Government may frame rules.

9. The Local Government may from time to time frame rules not inconsistent with this Act for regulating the appointment, duties, and remuneration of Public Notaries, and for prescribing the fees to be paid to Public Notaries.

From C. L. TUPPER, Esq., Under Secretary to the Government of India, Department of Revenue, Agriculture and Commerce, to the Secretary to the Government of Bombay, Revenue Department,—No. 586, dated Simla, the 16th September 1878. No. 30.

Referring to the correspondence ending with my letter No. 404, dated the 1st July last, on the subject of the relief of indebted agriculturists in certain parts of the Bombay Presidency, I am directed to observe that the recommendation made by the Government of Bombay in paragraph 13 of Mr. Ravenscroft's letter No. 2202, dated the 16th April 1877, for the amendment of the Limitation Law so as to extend the period during which money-bonds are current from three to twelve years has not been disposed of. I am accordingly to enquire whether it is still desired that this modification in the law should be effected.

2. Your letter No. 4579, dated the 5th instant, has been received and will be at once considered by the Government of India.

From the Honourable E. W. RAVENSCROFT, C.S.I., Chief Secretary to the Government of Bombay, to the Secretary to the Government of India, Department of Revenue, Agriculture and Commerce,—No. 5024, dated Bombay Castle, the 2nd October 1878.

In acknowledging the receipt of Mr. Under Secretary Tupper's letter No. 586, dated 16th ultimo, enquiring, with reference to the recommendation made in paragraph 13 of this Government letter No. 2202, dated 6th April 1877, for the amendment of the Limitation Law so as to extend the period during which money bonds are current from three to twelve years which yet remains to be disposed of, whether this Government still desire that the modification should be effected, I am directed to state that if the other recommendations made by them for the relief of indebted agriculturists in the Bombay Presidency be adopted, His Excellency the Governor in Council thinks that the Law of Limitation may stand as it is, for in his opinion, it is better not to alter the general law, save under necessity, which he doubts in this particular.

From A. O. HUME, Esq., C.B., Secretary to the Government of India, Department of Revenue, Agriculture and Commerce, to the Chief Secretary to the Government of Bombay,—No. 696, dated Calcutta, the 27th November 1878.

I am directed to acknowledge the receipt of your letter No. 4579, dated the 5th September last, commending upon the Bill for the relief of indebted agriculturists in certain parts of the Bombay Presidency, now under consideration in the Legislative Council of the Governor General, and replying to the remarks on the subject of that measure contained in my letter dated the 1st July 1878, No. 404.

2. The Government of Bombay are empowered and prepared to legislate on the subjects described in the 3rd paragraph of my letter under heads (b)* and (c)†; and these need not therefore now be noticed. Their consideration, moreover, will most conveniently be deferred to the time when the Bills providing for them have been introduced and passed in the local Legislative Council, and are submitted for the assent of His Excellency the Governor General.

3. The question immediately before the Government of India is that connected with head (*a*), describe in paragraph 3 of my letter as the proposal to compel courts, in cases where agriculturists are sued on bonds or for money due, to go behind the terms of the bond, to enquire into the justice of the claim, and to take into consideration the equity of the interest charged, even though it may have been distinctly agreed to by the defendant. Your letter is chiefly concerned with this point, and a separate minute, recorded by His Excellency the Governor of Bombay, lays great stress, upon the necessity for legislation in this particular direction if complete protection is to be given to the class of ryots for whose benefit the measure is desired.

4. The question was before fully considered by the Government of India, and the reasons which eventually prevailed to exclude this particular provision from the Bill introduced into the Legislative Council were that in defended cases the law, as it stands, and as it has in several instances been applied, is sufficient, and that in undefended cases such a provision would be inexpedient in the interest of the creditor; and after a careful persual of all that is now urged by the Government of Bombay, His Honour the President in Council is of opinion that the conclusion then arrived at was correct.

5. There is now no contention as to the existence of the law (Regulation V of 1827) and of the rulings on which the Government of India relied as containing principles sufficient to meet the objects contemplated by the Government of Bombay; but it is objected that, as the law is fifty years old, and the rulings date from 1866 and 1869, though they may be presumed to be well known to the Members of the Bench and Bar, they are ineffectual to stay the evil by which "thousands of decrees have been annually obtained by money-lenders against ryots, upon written acknowledgments, for sums vastly in excess of the amounts ever actually lent by them." The condition of things which the Government of Bombay desire to remedy does not, therefore, arise from any uncertainty or difficulties of the law (as is represented in paragraph 10 of His Excellency the Governor's minute), but from the ignorance of it by the mufassal courts, or, as seems more probable, from the impossibility in the vast majority of cases of a defendant being able to disprove his written acknowledgment by any extraneous

* (b) To make it illegal to award compound interest, or more interest than the amount of the principal found to be due.

† (c) To limit the liability of a ryot for debts incurred by his ancestors.

evidence. In the former case, the exposition of the existing law by a circular from the local High Court would probably meet the evil; and in the latter, it would, the Government of India believe, be inequitable to throw the burden of proof upon the plaintiff.

6. It is, indeed, upon this second point exclusively that there is a substantial difference of opinion between the Governments of India and Bombay; and when His Excellency the Governor says,—"We are asking not for the recognition of principles which the Government of India disallow, but for the enforcement of principles which they seem to allow,"—he is under a mistaken impression. The regulation referred to as governing the point in Bombay is Regulation V of 1827, Section 9, which is to the effect that "written acknowledgments of debt in any shape shall not be held conclusive in any court of law as to the amount, *if the defendants show that a full consideration has not been received;*" and with reference, therefore, to the observations of the Legal Remembrancer quoted in the 11th paragraph of His Excellency's minute, the Bombay High Court would rightly seem to have ruled, in reserval of a lower court's decision, that the District Judge was in error in deciding that it lay upon the plaintiff to prove that consideration had been received. In the case in question it was incumbent upon the defendant to show that full consideration had not been received.

7. Now, the whole tenor of all that has been urged by the Government of Bombay, and what is required in the draft Bill submitted with your letter of the 19th January 1878, is against this rule of law as it exists. It is proposed that, if the defendant in such a suit is an agriculturist, the court shall require the *plaintiff* to prove the origin of the debt and the nature of each subsequent transaction; and if any written acknowledgment is relied on by the plaintiff, it is for *him* to prove, to the satisfaction of the court, that the whole amount therein named was actually advanced to the debtor. This, in the opinion of His Honour the President in Council, would be carrying special legislation to very great lengths; and admitting the gravity of the evils ascertained by the Deccan Riots Commission, still the introduction of class legislation of this particular character, solely for the benefit of the agriculturists, cannot, in the judgment of the Government of India, be justified. His Excellency the Governor in his minute says that if his proposal under head (*a*) be passed into law, "they (the ryots) would set up defences fast enough;" and there can be no doubt that such would be the case. The Government of India are, however, unable to percive the equity of the proposal that, there being an acknowledgment which the defendant does not deny, which, under the further proposals now submitted, would have to be attested in all its stages before a Notary Public, and which, even apart from such proposals, might be strengthened by the ordinary registration procedure, the defendant should, on its production in court, be able, by a simple denial as to the amount, and without further trouble, to cast upon his opponent the responsibility of establishing the correctness of transactions beneficial to himself, and dating, perhaps, from many years. There can be little doubt that such a provision would open the door to wide dishonesty and demoralization.

8. As matters stand, under the Regulation of 1827 and the rulings which have governed similar cases of contract elsewhere, the court, in suits where a defence is set up, is bound to go behind the record and enquire into all the facts; but to enable it to do so, the defendant who contests the accuracy of the bond to which his signature is attached, is required to sustain his objection by evidence. The Government of Bombay desire by fresh and positive legislation to set aside this principle, to impose upon the court, not only in defended actions, but in cases tried *ex-parte*, the obligation to investigate completely, in all cases without exception, all the facts before a decree can be given, and to throw the burden of proving these facts, also always and without exception, upon the plantiff. The result of such legislation would certainly not be in the direction of encouraging thrift and caution and forethought,—virtues which it is desired to foster among the ryots of the Deccan,—but would be either that loans would cease—a possible advantage, though not such as the ryots might expect—or that the agriculturist would indulge in the luxury of unlimited borrowing at any rate of interest the money-lenders might demand, under the knowledge that by a simple repudiation of the debt, or even by sitting still when the case came into court, the uncertainties of the law would all be in his favour, and that he would lose rather than gain by intervention in the suit.

9. On these grounds, the proposal, as a political and administrative measure, is, in the opinion of His Honour the President in Council, inexpedient, and one not likely to remedy the evils which it is des red to reform. Nor, in its technical and merely legal aspect, is it less

open to objection. The rule embodied in Section 102 of the Evidence Act, and its illustration (*b*), which the Government of Bombay desire to have repealed, rests on considerations of good sense and convenience. The burden of proof should lie on the party who substantially asserts the affirmative (*i.e.*, in the present case, the debtor alleging that his bond was obtained by fraud), *first*, because the negative does not admit of the direct and simple proof of which the affirmative is capable; and *secondly*, because it is only reasonable and just that a litigant, who relies upon the existence of a fact, should be required to prove his own case. Nor are there in the peculiar misfortunes and difficulties of the Deccan ryots and their creditors to be found facts which would justify the abrogation of these practically universal rules of civilized jurisprudence. On these considerations, His Honour the President in Council regrets that he cannot assent to special legislation for the purpose of shifting the normal incidence of proof as between the indebted agriculturist in the Bombay Deccan, and those to whom his debts are due.

10. The 17th paragraph of your letter, while expressing approval of the draft Bill prepared by the Government of India, suggests the addition of certain provisions, with a view to improving its details and securing its more effectual operation. The first of these additions is to the effect that the creditor of an agriculturist to whom not less than Rs. 100 is owing should be empowered to apply for a declaration of his debtor's insolvency, as well as the debtor himself, and that an insolvent agriculturist should be entitled to an absolute discharge from his debts, if they were not incurred by himself, as well as if they do not exceed in the aggregate Rs. 200. The Government of India do not consider that at present any special necessity has been proved for this extension of the insolvency provisions of the Bill. It does not seem probable that creditors would apply to have their debtors declared insolvent under the Code of Civil Procedure, as it is not apparent what they would gain by it; and whilst it is understood that no man is responsible for the debts of his ancestors beyond the assets inherited, the Bombay Government will themselves legislate so as to limit the liability of the ryot for ancestral debts. The ground, therefore, of the distinction proposed is not evident.

11. With respect to the second addition, and to recommendations made further on, His Honour the President in Council agrees that all land belonging to an agriculturist, whether it pays revenue or not, should have the benefit of the protection which the Bill affords both in respect to sales in execution of decrees after as well as before the insolvency proceedings and in regard to mortgages and other charges on the property. The 3rd and 4th sections of the Bill will accordingly be amended as proposed in your 19th paragraph, *viz.*, the proviso to section 3 will be omitted, and section 4 will be made to apply to agriculturists and to instruments affecting their land only.

12. The third proposal is that certain draft sections submitted with your letter, which require the execution and registration of all instruments to which agriculturists are parties before a Notary Public, should be substituted for section 4 of the Bill. The class of persons to be appointed under these sections will probably be quite different from the class of persons to be appointed notaries under the Negotiable Instruments Bill now before the Legislative Council of the Governor General in Council, and it is feared that confusion might thus result. Furthermore, the provision (proposed section 6) that instruments registered by notaries shall be deemed duly registered under the Registration Act will apparently necessitate the establishment of two sets of registration offices, and thus do away with the convenience which the public enjoy under the present system of having only one office to go in order to ascertain what instruments, if any, affect a given piece of land. The proposed notaries are intended to enquire into the facts of execution and identity of executants, and to record any payment (or, perhaps, admission of receipt) of consideration made in their presence. This is all, however, already, and the Government of India consider better, provided for by Act III of 1877, Section 34, clauses (*a*) and (*b*), and Section 58, clause (*c*). The substitution therefore for Section 4 of the Bill of the draft sections submitted by the Government of Bombay does not seem necessary.

13. In the view expressed in the 18th paragraph of your letter, that power should be taken in the Bill to extend its operation by order of Government to any part of the Bombay Presidency to which hereafter it may be deemed desirable to apply its provisions, the Government of India concur; but looking to the very special character of the legislation resolved upon, and of the undesirability of any departure from the fixed general rules of law, save upon the strongest proof of exceptional local necessity, such power should be vested in the Governor General in Council. It must also be understood that, unless upon very cogent grounds, the

Government of India will be reluctant to give their consent to the extension of the Act beyond the limits of the four districts for which it is primarily to be enacted.

14. In conclusion, I am to say that instructions will now be given for the amendment of the Bill in the sense required by the foregoing remarks.

From Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the GOVERNOR GENERAL of India in Council,—No. 63 (Legislative), dated India Office, London, the 26th December 1878. No. 33.

With reference to my telegraphic message* cited on the margin, I forward, for the consideration of Your Excellency in Council, copy of a despatch† which I have addressed to the Government of Bombay relative to a Bill which has been introduced into the Bombay Council for the relief of indebted agriculturists in certain parts of the Presidency of Bombay.

* *From Secretary of State to Viceroy, 3rd December 1878.*

"Your Bombay Indebted Agriculturists Relief Bill. Await my despatch."

† No. 4, dated 26th December 1878.

2. I observe from the Proceedings of Your Lordship's Legislative Council of the 20th of June last that Mr. Cockerell obtained leave on that day to introduce a Bill for the same purpose; but I am not aware that any such Bill has been drafted and introduced.

3. In my despatch to the Government of Bombay I have expressed at length certain views which have presented themselves to my mind on a consideration of the report of the Commission appointed to enquire into the Deccan riots, and I am desirous that Your Excellency in Council should consider these remarks in connection with further legislation on this important subject.

From Her Majesty's Secretary of State for India, to His Excellency the Honourable the GOVERNOR IN COUNCIL, Bombay,—No. 4 (Legislative), dated India Office, London, the 26th December 1878. No. 34.

I have to acknowledge the receipt of the despatch from Your Excellency in Council, dated the 30th September last, No. 11, transmitting for my information copy of a "Bill for the Relief of Indebted Agriculturists in certain parts of the Presidency of Bombay," which has been introduced into your Legislative Council.

2. On the 16th November I despatched to Your Excellency the following telegraphic message:

"Delay proceeding with Indebted Agriculturists Bill. Despatch follows."

3. I now proceed to state the reasons which induce me to doubt whether the provisions in the measure before me are at all adequate for grappling with the evils which have been so prominently brought to light in the report of the Deccan Riots Commission.

4. When that report arrived in this country in May 1876, Lord Salisbury was so deeply impressed with the distressing picture therein given of the agricultural population in the Deccan, that he awaited with great anxiety some communication from the Government of India as to the steps intended to be taken. But none such having arrived after an interval of nearly a year-and-a-half, His Lordship appointed a Select Committee of his Council to consider the report.

5. The Committee began to sit in November 1877, held several meetings and examined some experienced witnesses well acquainted with the Bombay Presidency; but before they had terminated their inquiries, a despatch was received from Your Excellency in Council in February of the present year enclosing the draft of a Bill for the relief of Indebted Agriculturists in the Presidency of Bombay, and which you desired to have introduced into the Council of the Supreme Government.

6. That Bill contained three main principles:

(1) That the Courts should be obliged to enter into the merits of every money clam whether secured by bond or not, and should only award such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest or a larger amount of interest than the principal sum.

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(2) That the principle of the Insolvent Act, as prevailing in the Presidency town, should be applied to the Deccan agriculturists.

(3) That land should not be sold in execution for debt, unless specially pledged in a bond duly registered.

Lord Salisbury, although not fully satisfied with all the principles contained in this measure, thought the occasion for attempting remedial legislation to be so urgent that he sanctioned by telegram the introduction of the Bill, being quite willing that the experimental legislation contemplated in the Council of the Governor Genaral should be attemped. I also am of the same opinion.

7. Leave was accordingly given for the introduction of the Bill into the Council of the Governor General on the 28th June last, but, for reasons which have not been transmitted to me, the Government of India preferred, instead of one comprehensive Act, that your Government should pass a law dealing with some minor points relating to interest and to ancestral debts. The Bill which I have now before me is the result of the action of the Supreme Government.

8. I can well understand the difficulties which have deterred the Government of India from dealing with this subject as a whole, and which have induced them to leave minor points to be disposed of by the Local Government; but if the evils sough t to be remedied are capable of being eradicated by legislation, I am clearly of opinion that they should not be dealt with piecemeal.

9. The very able report of the Commission and the mass of valuable information contained in the appendices enable us, I think, to draw the conclusion that some of the great causes which lie at the bottom of the proverty of the Deccan are wholly beyond the reach of the legislator, and are inherent in the national character and in the customs which have prevailed for countless generations. The Deccan ryots, like the general mass of the cultivating classes in other parts of India, are entirely without capital, and are driven on the first bad harvest into the hands of the money-lender, not only for the means to till their fields, but for food to keep themselves and their cattle alive till the crops of the next season are matured. This fact has created the system of borrowing at high interst which prevails so largely amongst the agricultural population, and has made the existence of a money-lender in a Hindu village as essential as that of a ploughman.

10. The normal condition of a Hindu cultivator is much aggravated by local circumstances in parts [of the Deccan. The soil is sterile, the climate is precarious, a good crop being in some parts obtained only once in three years, the fall of rain is scanty, the peasantry, though a sturdy and ordinarily a law-abiding people, are described as "utterly uneducated and with a narrow range of intelligence." It is obvious that the causes mentioned in this and the preceding paragraph are not to be easily modified by any legislative act.

11. The districts in which the riots took place came into British possession in 1819, and at that period and for 20 years afterwards divers causes, such as the ravages of Holkar's army and the dreadful famine which followed his campaign—a famine which was repeated two or three times during the first 20 years of the century—the subsequently heavy fall of prices, and the consequently oppressive weight of the old Mahratta rate of assessment which was at first continued by the Government of the day, all these had produced an amount of proverty and ruin which the settlement officer writing in 1833 found it impossible to describe.

12. The Government of that day, however, made strenuous efforts to better this state of things. They reduced the assessment from an average rate of 13½ annas to 7 annas, they gave the cultivators for the first time fixity of tenure, and they abolished extra cesses.

13. A Resolution of the Government of Bombay, dated 30th August 1875, describes the satisfactory results of this new settlement of the land: "In 1838 more than 50 per cent. of arable land was waste; in 1871 only one per cent. Population increased, during the term of the settlement, 39½ per cent.; agricultural cattle 19 per cent.; ploughs 22½ per cent.; carts 270 per cent.; and wells 40 per cent. Government land was unsaleable in 1838; during the last five years of the settlement examination of the registration records showed that it fetched from 10 to 52 times its assessment. Thirty years ago there were no made roads, and communication was costly and difficult; the taluka is now traversed by the railway and by several excellent roads, and the increase in the number of carts indicates the extent to which the people avail themselves of the facilities of communication with markets."

14. Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India), there is undeniable evidence in the report before me that the very improvements introduced under our rule, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

15. The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure, marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in most undue proportions. The first fall in prices, and the first bad harvests, both of which had occurred in these districts, found the cultivators as poor as ever, but encumbered with an additional mass of debt. Still no one would advocate as an amendment of the law that we should abolish fixity of tenure, or increase the assessment on the land.

16. Up to this point, then, I can see no opening on which the legislator can enter with effect. In all civilized societies there is a vast amount of suffering and destitution, very lamentable to contemplate, but which it is wholly out of the powers of the State by any direct action to eradicate. All that Government can do is to take care that its own institution shall not aggravate the misery which so often follows the spontaneous action of the population.

17. This last observation brings me to the consideration of the Bill now before me. Your Government has distinctly perceived that the courts of justice we have instituted, and the law they administer, operate most harshly, and frequently with great injustice, on debtors, who form the great bulk of the population. Here, therefore, is an opportunity for the beneficial interference of Government. Both the Bills which I have alluded to above have been framed with the view of mitigating the law, and of extending the powers of Judges to modify the contracts entered into between man and man.

18. I may say at once, after full consideration, that the Bill introduced into Your Excellency's Council appears to me to be so dependent upon the character of the Judge, and so likely to be defeated by agreements between helpless debtors and wily creditors, that I cannot suppose it will lead to any substantial results.

19. The question then remains as to what shall be done, for it is clear that some alteration in the existing law is imperatively called for. A fitting measure can only be properly prepared in India. For the consideration of the two Governments I proceed to notice the most salient points which have presented themselves to me on this head in the report and appendices of the Commissioners and the lines of improvement which have suggested themselves. And I shall transmit a copy of this despatch to the Government of India, with the desire that they shall immediately apply themselves to the subject in a comprehensive manner.

20. Under Native Government, it seems no assistance was ordinarily afforded by the State to a creditor for the recovery of his debts. No court of justice was open to him, and he was left to his own devices to extort what was due, Government winking at very forcible measures that were occasionally employed. The result was not so bad as might have been expected. It speaks well for the national character that contracts were rarely repudiated. And the Commissioners observe that in these proceedings "honesty was the best policy for the ryot, and caution was a necessity to the money-lender."

21. On the establishment of our rule, however, courts of justice were established everywhere.

22. It is abundantly manifest to me, on the evidence collected by the Commissioners, that no evil has been so loudly, and I must say so justly, complained of by the people as the action of the courts. The extreme severity of the law on debtors has been pointed out by the report.

23. The Judges are only the instruments for enforcing the law as it is, and no blame is imputable to them. But the extracts from the statements of the Judges themselves, cited by Mr. Colvin, demonstrate completely that, irrespective of the hardness of the law, they are incapable of administering justice between debtor and creditor.

24. One Judge says—"the Subordinate Judges in the district are much overworked, and really have not time to investigate cases properly and to weigh the evidence"; another says—"our subordinate Judges are too hard-worked to allow, even if they were inclined to do so, of their going into the history of such cases. The court which was inclined to go into the old history of a case would have nothing but the sowkar's books to go upon if he produced them."

25. Another Judge enumerates the frauds perpetrated by the money-lenders, and states that they are practised with impunity. When "the deluded kumbi * * * is dragged into court he is unable to answer the claims, or if he states a defence he is not in a position to prove it."

26. The Commission also assign another reason for our courts being mere instruments in the hands of the money-lenders, namely, their great distance from the home of the debtor. A money-lender may easily instruct a pleader to take out process against a debtor in a court 40 or 50 miles distant at little cost to himself, but it is ruin for a cultivator, dependent on his daily labour, to absent himself for days together from his field, even if he has a valid defence.

27. Here then it is quite clear we have evils produced by the legislature itself, and which it is within the competence of Government to extirpate.

28. I am extremely unwilling at any time, but especially now, to suggest any increase to the cost of administration ; but if it is made manifest that our courts of justice are inefficient in these special cases, and that our Judges admit they have not time to inquire into the real facts by a thorough investigation, I would suggest that although an addition to the cost of administration is very much to be deprecated, it is imperative to remedy the defects here pointed out. A re-distribution of expenditure might be made, and I observe that it is stated in the Commissioners' report that 88 subordinate courts bring in a revenue of R16,89,744, and that the expenditure, including salaries of Judges, is only R6,90,717.

29. Evils such as have been depicted above, arising out of the costliness and inaccessibility of courts of justice, though of a much slighter character, existed in England also, and the remedy suggested was the establishment of Small Cause Courts. This innovation, after having been opposed sturdily for many years, was finally adopted, and has proved so eminently successful that nearly every year witnesses some extension of their powers. In India also the institution has been partially adopted. But it is from France that the most important evidence can be obtained as to the value of local courts. The agricultural population there is more akin than the English to that of India, inasmuch as French landed property is in the hands of innumerable petty owners, who cultivate with their own hands.

30. In that country small causes up to 100 francs are tried in every village before the Juge de Paix. The proceedings are summary, written pleadings are prohibited, and his decision is final on all sums not exceeding 50 francs. In the belief that a more detailed account of the proceedings of these courts than is to be found in the Code Civil might be useful to the authorities in India, Sir Frederic Goldsmid was requested to obtain some information on his late official visit to Paris, and I herewith transmit to Your Excellency the note he has furnished. It will be observed that the early meeting of the parties before the Judge in order to produce an amicable settlement of the suit, which is so strongly insisted upon by Mr. Bentham, is spoken of by the French authorities in the highest terms.

31. I cannot doubt that the existence of courts with summary jurisdiction and without appeal up to a limited amount, and possibly with the exclusion of professional pleaders, placed in localities within reach of the suitor's home, would tend to remove many of the evils which have been brought to notice.

32. I am quite aware of the difficulties which intervene to prevent the entrusting of large summary powers to Subordinate Judges, and that no portion of a Judge's functions requires more experience and self-control than the exercise of that large discretion over contracts which the High Court inculcates as belonging to Indian Judges under the law. For this reason it is obvious that the summary jurisdiction to be attributed to Subordinate Judges should only extend to a very limited amount.

33. But I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all civil Judges in the Deccan with great benefit, and the limit to be fixed would of course vary with the rank of the Judge. If the District Judge could devote one day in the week to the disposal of small causes up to, say, R500, as was the practice formerly of the Supreme Court at Bombay, he would, in my opinion, confer infinite benefit on the community ; he would afford an example to the courts below him of the manner in which such jurisdiction should be exercised ; and he would personally derive the benefit which experience in this country proves to result from a Judge of Appeal being occasionally employed in trying original causes.

34. How far these suggestions can be made applicable to the portions of India to which the investigation of the Deccan Riots Commission have extended, I leave it for the Supreme Government, in communication with Your Excellency in Council, to decide ; but I am

desirous that no time should be lost, and that a comprehensive measure should be at once proceeded with, founded on the principles which I have indicated, and on those which Lord Salisbury had previously sanctioned.

NOTE.

Des Justices de Paix en France.

No. 35.

Paris, le 18th Decembre 1877.

Les justices de paix ont été instituées en France par la loi de 16-24 Août 1790.

Il y a un juge de paix par canton, il est assisté d'un greffier et il lui est adjoint deux suppléants depuis la loi du 29 Ventôse, an IX. A Paris, il y a autant de juges de paix que d'arrondissements, quelques grandes villes de France en ont également plusieurs.

There are 20 "arrondissements" which form so many "cantons" of juges de paix *in Paris*. The average population is about 90,000.
F. J. G.

Nul ne peut être juge de paix s'il n'est Français et âgé de trente ans au moins (Art. 209 de la constitution de l'an III.) Il est nomme comme tous les fonctionnaires publics, ainsi que les suppléants et le greffier, par Décret du Chef de l'Etat, et prête serment au tribunal de première instance. Aucun d'eux n'est immovible.

Average superficies marked at 300.

Les juges de paix jouisent d'un traitement qui varie de 1,800 á 5,000, les fonctions des suppléants sont gratuites ; aussi ces derniers sont il choists parmi les officers ministériels (notaires, avoués, maires, etc.) Quant aux greffiers, ils jouissent d'un traitement fixe de 600 fr. à 2,400 fr. et touchent, en outre, des droits d'expedition pour les actes de leur ministére.

Les juges de paix ont une triple mission :—

1°. En *matière penal*, ils connaissent des contraventions de simple police (Code d'Instruction Criminelle, art. 137 et suivant) et prononcent des peines variant de 1 à 19 francs d'amende et de un à cinq jours de prison (C. P., Art. 461 et suivant). Ces jugements sont susceptibles d'appel lors qu'ils infligent une pénalité supérieure à cinq francs d'amende ; l'appel est porté devant le tribunal correctionnel (Code d'Inst^{on} Cr^{lle} , art. 172 et suivants).

2°. En *matière civile*, ils statuent,—

En dernier ressort, sur toutes actions personelles ou mobiliéres jusqu'à la valeur de 100 francs.

A charge d'appel devant le tribunal civil, sur toutes demandes, contestations, etc., excédant cette somme selon les distinctions de la loi du 29 Mai 1838, modifée le 2 Mai 1855.

3°. En *matière de concilation*, ils doivent s'efforcer de mettre d'accord les parties en cause de façon à prévenier le procès par un arrangement aimable dont ils dressent procès-verbal.

Cette démarche est le préliminaire obligatoire de tout procès entre parties capables de transiger et hors le cas d'urgence ; toute demande en matière commerciale est reputée urgente, et dispensée, par suite du préliminaire de conciliation. (Code de Procédure Civil, Act. 49.)

N. B.—The appointment of juge de paix, I am told, is held pending the pleasure of the governing authorities, and is in no way limited to a certain number of years.

F. J. GOLDSMID.

Demi-official from Monsieur F. J. GOLDSMID, to Sir ERSKINE PERRY,—No. 2, dated Hotel de Louvre, Paris, the 24th December 1877. **No. 36.**

The authorities tell me they cannot give me a fair average of a rural canton, as they vary so considerably in extent, and a large extent may sometimes have but a small population ; but a highly instructive and useful volume called "Statistique de la France," * of which the first volume has been lent me, shows that this country has a superficies of 52,857,675 hectares, and that there were in 1872 no less than 2,857 "justices de paix" for a population of 36,102,921. This book published by Guillaumin 14, Rue Richelieu, in 1875, might, doubtless, be procured at Hachette's or Baillière's in London. In the meanwhile, I make an extract to the point :—

* Par Maurice Block.

"Le traitment des juges de paix, réglé par la loi du 21 Juin 1845, et por l'ordonnance "du 2 Novembre 1846, est le méme que celui des juges de tribunaux de première instance

dans les villes où siégent ces tribunaux; dans les autres localités, il'est ainsi réglé par l'ordonnance du 2 Novembre 1846, et par trois décrets, du 23 Août 1858, du 22 Septembre 1862, et du 12 Novembre 1868; 3,000 fr. dans les cantons composant les arrondissements de St. Denis et de Sceaux; 3,000 fr. dans les villes de 39,000 âmes et au-dessus (Ronbaix, Tourcaring); 2,700 fr. dans les villes de 20,000 âmes et au-dessus (Arles, Cette, Elbeuf, Le Creusot, et Mezières, chef-lieu de département); 2,400 fr. dans les chief-lieux d'arrondissement où ne siége pas de tribunal de première instance, et qui out mois de 20,000 âmes (Argelès, Bonnac, Commercy, la Palissee, la Tour-du-Pin, Manléon, le Puget Théssiers, et Poligny, &c., &c.,"), *i.e.*, briefly, 2,100 francs for a minimum population of 3,000: 1,800 francs where less than 3,000. It appears, moreover, that 2,051 "juges de paix" belong to the last class, and 248 to the penultimate. Paris "juges de paix" (there are 20) have 3,000 francs, besides an office allowance of 1,500 francs=9,500 (380*l.*).

As regards the average size of a rural canton, I take the letter "A" in the Directory of Departments, etc., and strike an average of cantons coming under that letter.* I then find the average of hectares in 11 Departments (specified in margin). The result is that there are about 30 cantons in 1,560,000 acres (634,458 hectares). Each "juge de paix" would then have an extent of 52,000 acres.

	Cantons.		Cantons.
* Ain having	36	Ardennes having	31
Aisne „	37	Ariége „	20
Allier „	28	Aube „	26
Alpes Hautes „	24	Aude „	31
Alpes Basses „	30	Aveyron „	42
Ardéche „	31		

On again looking over Block's Book of Statistics I find 91 Departments with—

363 arrondissements.
2,850 cantons.
37,386 communes.
38,067,094 population in 1872 (an average of 13,346 to the canton).
36,472,031 do. in 1866.

F. J. GOLDSMID.

P. S.—I make the hectare=2½ acres, less ⅛th of a rood. The "Annuire" of the "Bureau des Longitudes" makes it 2·47114316.

As regards "conciliation," it is considered here to work admirably. They have endless arguments in its favour; but their higher Judges have not the power of using it as ours in England (which my informant seemed to lament). It is the special privilege of the "juges de paix."

No. 37. From C. E. BERNARD, Esq., C.S.I., Officiating Secretary to the Government of India, Home Dept., to the Secretary to the Government of Bombay,—No. 222, dated Fort William, the 26th February 1879.

I am directed to communicate, for the information and guidance of His Excellency the Governor in Council, Bombay, the following observations and instructions on the subject of the Despatch No. 4, under date the 26th December last, addressed by Her Majesty's Secretary of State to the Government of Bombay regarding the measures to be taken for the relief of the ryots in the Deccan with reference to the facts stated and the opinions expressed in the report of the Deccan Riots Commission.

2. The report in question was reviewed at length in your letter of the 6th April 1877, No. 2202, in which the subject was dealt with under three heads, namely,—

(1) the nature and causes of the riots themselves;
(2) the defects in the revenue administration which may have contributed to cause the riots, and the remedies advisable; and
(3) the effect of the civil law and civil courts on the Deccan peasantry, and the measures advisable for altering the law or reforming the courts.

Under the first head the Bombay Government shewed that the riots were confined to an arid tract of the Central Deccan comprising parts of the four districts of Poona, Satara, Ahmednagar and Sholapur. There was comparatively little serious crime or violence. The hostility of the ryots towards their creditors, the money-lenders, lay at the bottom of the disturbances. This feeling had been increasing in strength for some time. The peasantry are poor owing to the sterility of the soil and the extreme variableness of the seasons. They habitually contract debts beyond their means; most of them are said to be "steeped in debt." Since 1836 the ryots have been able to give a lien on their lands to their creditors, who consequently gained more and more power over the ryots. From 1850 to 1866 there was a period

of great good furtune for the Deccan ryots. Railways and roads were made through the country; other public works were constructed; money was spent largely; and the cycle of prosperous years culminated in the era of the American War, when Deccan cotton fetched three to six times its usual price, and the market price of other agricultural products rose enormously. But after the close of the American War a great fall of prices took place. During the period of plenty the ryots had, many of them, paid of their debts; but they had contracted costly habits of life; and these habits they could not (or did not) suddenly discard. Thus, the pleasantry soon become involved in debt again. The money-lenders, most of whom belonged to an alien race whose home was in Rajputana, had little sympathy for the peasants. Civil courts had been multiplied, and their procedure had been rendered prompt. Creditors took their debtors into Court, obtained decrees, sold up the rayats' land, and reduced the rayats to the position of serfs. Hatred towards the money-lenders became more bitter, discontent with the procedure of the courts was engendered, and in March 1875 the popular feeling found expression in attacks and outrages on village bankers. One feature of these outrages was that the account books and bonds found in the money-lenders' possession were destroyed by the rioters.

3. On the second head, the Bombay Government, differing from the opinion of two members of the Commission, considered that the recent revision of the land-revenue assessment in the Deccan, the principles on which that revision was conducted and the results of that revision, had no share in causing the rayats of 1875, or in causing the depressed condition of the peasantry. The Bombay Government showed that befere 1875 they had, in consequence of the great fall of prices, made considerable reductions in the land-revenue demand recently imposed on parts of the four districts where the riots occurred; and they had laid down restrictions on future increases of the land-revenue assessment. The Bombay Government saw no sufficient reason for acting on the Commission's recommendation that large increases of the land revenue should be made leviable gradually, instead of being carried out *per saltum* in one year as at present. And they did not see their way either to the Government usefully taking the place of the village banker and lending money to the rayats, or to any arrangement for altering the land revenue year by year according to the variations of the season. The Bombay Government concluded their review of this part of the subject by stating that the state of the ryots of the Deccan was most unsatisfactory; that one-third of the ryots were hopelessly involved and were little better than serfs, practically at the mercy of the bankers; and that ruin, if not arrested, would soon overtake the great body of the ryots.

4. Under the third head, namely, the action of the civil law and of the civil courts, the Bombay Government grouped the difficulties of the ryot in three classes. Before a ryot was taken into Court by his creditor he was at a disadvantage by reason of his poverty, his ignorance, his extravagance, the load of ancestral debt which weighed upon him, the usurious interest charged, and the fraud occasionally practised by the money-lender, and also by reason of the shortness of the term of limitation which entailed the frequent renewal of bonds at usurious interest. When a ryot was taken into Court by his creditor, he was at a disadvantage by reason of fraud practised by Court subordinates in collusion with the creditor, whereby a summons was often returned as served when the ryot knew nothing whatever about the suit or summons; by reason of the *ex-parte* decrees which followed upon such fraudulent returns to summonses; by reason of the distance of the Courts, the long duration of contested suits, and the inability of the Judge to help the ryot to put his case properly; and by reason of the high cost of litigation. After a decree has been passed against a ryot he is under great difficulties, because he is liable to be imprisoned for debt; because his property of *all* kinds was (but is not now under the new Code of Civil Procedure) liable to forced sale; because his ancestral lands are liable to a forced sale conducted under circumstances which (under the new Procedure Code was passed) were generally very disadvantageous to the ryot. For the purpose of relieving the ryot from some of these difficulties the Governor in Council, proceeding on the recommendations contained in the report or minutes of the Commission, proposed—

(*a*) that all bonds between ryots and money-lenders should be executed by notaries pnblic;

(*b*) that the ryot should be entitled to receive from his banker a yearly statement of his account;

(*c*) that receipts for a ryot's payments should always be entered on the bonds;

(*d*) that ryots should have pass-books, wherein their dealings with their bankers should be entered;

(*e*) that the period of limitation for money bonds should be altered from three to twelve years;

(*f*) that civil judges should go more frequently on circuit;

(*g*) that the number of judges should be increased;

(*h*) that the High Court should instruct the subordinate courts to act up to the law which binds judges to weigh equitably the incidents to a disputed contract before it decrees full performance;

(*i*) that the High Court should take steps to keep the miscellaneous costs of litigation as low as possible;

(*j*) that Government should be enabled to advance money to insolvent ryots whose holdings were put up to auction by the civil courts, and should gradually recover the money through an agency for the management of such holdings.

The Governor in Council felt unable to support the recommendations of the Commission to th e effect that—

(*k*) imprisonment for debt should be abolished;

(*l*) sales of land in execution of money decrees should be abolished.

5. With this letter from the Bombay Government was forwarded a Minute by the Honourable Mr. Rogers, a Member of that Government, who advocated the abolition of imprisonment for debt, on the ground that the power to apply for execution against the person is seldom used by creditors, save as a means of extorting fresh and more usurious bonds from creditors.

6. Owing to the famine and other causes the recommendations made by the Commission and by the Local Government were not formally dealt with by the Government of India during the year 1877; but in the Code of Civil Procedure passed early in that year, before the receipt of your letter of the 6th April, but after the report of the Commission had reached the Government of India, certain provisions were introduced, the effect of which was to afford greater protection to the ryot as regards the sale of his land under decrees of court.

7. His Excellency Sir Richard Temple having in the meantime succeeded to the office of Governor, the Bombay Government took up the question again in their letter of 19th January 1878, No. 308. In this letter the Bombay Government stated that, although the evils on which the Commission had reported were less actively felt, still there was every reason to apprehend that they would sooner or later break out again. The Governor in Council admitted that the new Code of Civil Procedure (Act X of 1877) had improved the condition of the ryot; for his necessaries were now protected from sale; his lands, instead of being subjected to forced sale, might be placed under the management of revenue officers for the mutual advantage of his creditor and himself; he might protect himself from arrest by showing himself to be insolvent; and if his total debts did not exceed R200, e hmight, after his insolvency had been proved, be absolved by the court from all further liability. Nevertheless the Bombay Government held that some of the roots of the mischief on which the Commission had reported, remained untouched. The Governor in Council proposed early legislation on five separate matters, and forwarded a draft Bill to provide—

(1) that in money suits against ryots the court should be compelled to go behind the bond, into the facts and incidents of the transactions which led up to the bond;

(2) that in suits against ryots compound interest should not be decreed by the courts, and that simple interest in excess of the principal of a debt should not be allowed;

(3) that a ryot should not be bound to pay more than the principal of, and certain limited interest on, ancestral debts;

(4) that a ryot should be entitled at any time to claim the benefit of the insolvency law, without waiting (as the present law compels him to do) until he is arrested in execution of a decree; and

(5) that a ryot's lands should not be sold in execution of a money decree unless they have been specifically pledged to the decree-holder by a registered bond.

(22)

8. The Bombay Government subsequently, in their letter of the 4th of the following month, adverting to the possibility that the Local Government might not be legally competent to legislate on such a matter, recommended that the necessary legislation should take place in the Council of the Governor General.

9. The representations of the Bombay Government, of which the above is a summary, as well as the report of the Commission, received the most careful consideration from the Governor General in Council, and on the 1st July 1878 the Government of India, in a letter from the Department of Revenue, Agriculture and Commerce, No. 404, stated the conclusions at which they had arrived. Fully recognizing the great importance of the matter, and accepting the view taken by the Government of Bombay that a special remedy should be provided for the evils now weighing upon the ryots of the five districts embraced in the report of the Commission, the Government of India reviewed the five recommendations submitted by the Government of Bombay. Taking these recommendations in the order given above, the Government of India pointed out that Bombay Regulation V of 1827, as well as decisions of the High Courts of Calcutta and Bombay, certainly authorise, if they do not absolutely require, the courts to demand satisfactory proof that the consideration set out in a bond has really been received by the defendants. And the Governor General in Council doubted the expediency of further legislation in that direction. In regard to the award of usurious interest, it was observed that the old Hindu law called *Damdupat* still obtains in the Deccan, and that under its provisions the creditor cannot, among Hindus, recover as interest a sum more than equal to the principal of a debt; but that, if the existing law on the subject was insufficient, the Bombay Legislature were competent to deal with the matter. In regard to the 3rd point, attention was invited to Act VII of 1866 of the Bombay Council, whereby the liability of a Hindu for his ancestor's debts is restricted. At the same time it was said that if the provisions of that law did not give sufficient protection to ryots, the local Council would be competent to amend their own law on the matter. On the other points, namely, (4) a provision, empowering a ryot to claim the benefit of the Insolvent Court, and (5) a provision, exempting a ryot's land from sale save under a registered bond pledging the land in security for the debt, and requiring all bond relating to land to be registered, a Bill was prepared for submission to the Governor General's Council, and a draft of that Bill was forwarded to the Bombay Government for their opinion.

10. The Government of Bombay in their letter of the 5th September 1878, No. 4579, accepted, subject to certain suggested modifications, the Bill which the Government of India proposed to introduced into the Council of the Governor General in regard to points (4) and (5) described above. The Government of Bombay considered that the existing law and rulings of the High Court did not in practice suffice to protect the ryot from usurious compound interest, or from being unduly saddled with ancestral debts, and they remarked that the law, as it now exists on this point, applies only to particular classes of the community. His Excellency in Council expressed his readiness at once to act on the suggestion of the Government of India that a Bill to amend the law on the subject of points (2) and (3) above-mentioned should be laid before the local Legislature.

11. The Bombay Government again urged strongly that fresh legislation was needed to *require*, not merely to *enable*, the courts to go behind the bonds on which bankers sue ryots. They stated that at present it was not the practice of the civil courts of Bombay to require satisfactory proof that the consideration named in a bond had been actually received. They represented that any legislation in behalf of the Deccan ryots which did not fulfil this requirement would be a half measure, and must, therefore, be unsatisfactory. Further, the Local Government advised that the proposed legislation should provide for the establishment of local notaries public, as suggested by the Commission; and requested that power might be taken for extending the special legislation to other parts of the Bombay Presidency outside the four districts to which the enquiries of the Commission were mainly directed.

12. The Government of India, in replying to the foregoing representation in their letter of the 27th November 1878, adhered to the view that it was not expedient to legislate on point (1), in order to enable, or to require, courts to go behind the bond. The Governor General in Council held that the existing law enabled courts to do this, whenever the defendant contested the *boná fides* of a bond, and could support his objection. Any further legislation in that direction would practically be transferring to the plaintiff in suits for money due on a bond the burden of proof, which according to the Evidence Act lies upon the defendant. The Government of India were not prepared to assent to special legislation for the purpose of shifting the normal incidence of proof, as between the indebted agriculturist of the Deccan and

those to whom his debts are due. The proposal to extend the insolvency clause of the Bill beyond R200 in the case of ancestral debts seemed to the Government of India unnecessary. As the Indian Registration Act provided sufficiently for the registration of deeds to which agricul-turists were parties, and as the number of registration officers could be increased at the dis-cretion of the Local Government, it was deemed undesirable to create a second system of regis-tration offices, under notaries public, side by side with the registration offices under Act III of 1877.

13. Shortly after this letter was sent to the Government of Bombay, the Government of India received a telegram from the Secretary of State desiring that the Bills referred to should not be proceeded with pending the receipt of a despatch from Her Majesty's Government. With that despatch, which bears date the 26th December last, the Government of India have been furnished with a copy of the despatch bearing the same date, No. 4, addressed to the Government of Bombay, in which the subject is fully reviewed, and the conclusions are stated at which the Secretary of State has arrived as to the objects that should be aimed at in the pro-posed legislation. It should be noted here that when this despatch was written, the Secre-tary of State was not in possession of the letters addressed by the Government of India to the Government of Bombay under date the 1st July and the 27th November 1878. In regard to the procedure which is to be adopted, the Secretary of State has decided that the evils which it is sought to remedy, so far as they may be capable of being eradicated by legislation, should not be dealt with piecemeal, but should be provided for in a single comprehensive enactment. It follows, therefore, that the whole of the legislation must be comprised in one Bill to be passed in the Council of the Governor General. One of the conclusions which Lord Cranbrook draws from the Report of the Commission is that—

some of the great causes which lie at the bottom of the poverty of the Deccan are wholly beyond the reach of the legislator, and are inherent in the national character and in the customs which have prevailed for countless generations.

The grounds of this conclusion are stated in the following paragraphs:—

9. The Deccan ryots, like the general mass of the cultivating classes in other parts of India, are entirely without capital and are driven on the first bad harvest into the hands of the money-lender, not only for the means to till their fields, but for food to keep themselves and their cattle alive till the crops of the next season are matured. This fact has created the system of borrowing at high interest which prevails so largely amongst the agricultural population, and has made the existence of a money-lender in a Hindu village as essen-tial as that of a ploughman.

10. The normal condition of a Hindu cultivator is much aggravated by local circumstances in parts of the Deccan. The soil is sterile, the climate is precarious, a good crop being in some parts obtained only once in three years, the fall of rain is scanty, the peasantry, though a sturdy and ordinarily a law-abiding people, are described as 'utterly uneducated, and with a narrow range of intelligence.' It is obvious that the causes mentioned in this and the preceding paragraph are not to be easily modified by any legislative Act.

11. The districts in which the riots took place came into British possession in 1819, and at that period and for 20 years afterwards divers causes, such as the ravages of Holkar's Army and the dreadful famine which followed his campaign, a famine which was repeated two or three times during the first 20 years of the century; the subsequent heavy fall of prices, and the consequently oppressive weight of the old Mahratta rate of assess-ment which was at first continued by the Government of the day, all these had produced an amount of poverty and ruin which the settlement officer writing in 1838 found it impossible to describe.

12. The Government of that day, however, made strenuous efforts to better this state of things. They reduced the assessment from an average rate of 13½ annas to 7 annas, they gave the cultivators for the first time fixity of tenure, and they abolished extra cesses.

13. A Resolution of the Government of Bombay, dated 30th August 1875, describes the satisfactory results of this new settlement of the land. 'In 1838 more than 50 per cent. of arable land was waste; in 1871 only one per cent. Population increased, during the term of the settlement, 39½ per cent; agricultural cattle 19 per cent; ploughs 22½ per cent.; carts 270 per cent.; and wells 40 per cent. Government land was unsaleable in 1838; during the last five years of the settlement examination of the registration records showed that it fetched from 10 to 52 times its assessment. Thirty years ago there were no made roads, and communication was costly and difficult; the taluka is now traversed by the railway and by several excellent roads, and the increase in the num-ber of carts indicates the extent to which the people avail themselves of the new facilities of communication with markets.'

14. Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India) there is undeniable evidence in the report before me that the very improvements introduced under our rule, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

15. The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure, marriage cere-monies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders

competing for custom increased in most undue proportions. The first fall in prices, and the first bad harvests, both of which had occurred in these districts, found the cultivators as poor as ever, but encumbered with an additional mass of debt. Still no one would advocate, as an amendment of the law, that we should abolish fixity of tenure or increase the assessment on the land.

16. Up to this point, then, I can see no opening on which the legislator can enter with effect. In all civilized societies there is a vast amount of suffering and destitution, very lamentable to contemplate, but which it is wholly out of the power of the State by any direct action to eradicate. All that Government can do is to take care that its own institutions shall not aggravate the misery which so often follows the spontaneous action of the population.

The Secretary of State then proceeds to state his opinion as to the nature of the remedies that should be applied. His conclusion is that these remedies mainly consist in the adoption of measures for mitigating the harshness with which the courts of justice and the law operate on the debtors who form the great bulk of the population. He remarks that the civil judges are so few, and their courts are so distant from the homes of the ryots, that they are incapable of administering justice between debtor and creditor. And while reluctant to suggest, especially at the present time, any increase of the cost of administration, he deems it imperative that these defects should be remedied, either by a re-distribution or by an increase of expenditure. He remarks that the status of the agricultural population of India is much akin to that of France, and he suggests that it might be possible to establish in the rural districts of India, and of the Deccan especially, tribunals similar to those of the *juge de paix* in France and in Switzerland. In each of the rural *departments* of France there is a *juge de paix* on a salary of £72 a year and upwards, with an average jurisdiction over 80 square miles and of 13,300 souls. His decision is final up to a limit variously stated at £2 and £ 4 sterling. In all cases, which are not urgent or do not involve questions of mercantile law, he is bound to confront the parties together, and to attempt to secure an amicable settlement between them, before he brings the case on his file for formal trial. Lord Cranbrook suggests that "the existence of courts with summary jurisdiction and without appeal up to a limited amount, and possibly with the exclusion of professional pleaders, placed within reach of the suitor's home would tend to remove many of the evils which have been brought to notice." He admits that the circumstances of Indian society require that only a very limited summary jurisdiction should be given to Subordinate Judges, more especially in the exercise of discretion as to the enforcement of the terms of written contracts. But he suggests that "summary jurisdiction without appeal might experimentally be conferred on all civil jugdes in the Deccan with great benefit," and he adds that "the limit to be fixed would of course vary with the rank of the judge." His decision is that a comprehensive Bill for relieving the Deccan agriculturists should be framed, as soon as possible, on the principles set forth in the despatch, and also on those which Lord Salisbury had previously sanctioned.

14. The Governor General in Council has very carefully considered the observations and instructions contained in the Secretary of State's despatch. The suggestion that the number of courts of justice in the interior should be increased, and that all Judges should be invested with a final jurisdiction in petty cases, points to a very considerable change in the procedure of our civil courts. The propriety of limiting the right of appeal in petty civil cases has been discussed in India for many years past. At present the decisions of Courts of Small Causes are practically final up to a limit of R500, in what are known as cases of the Small Cause Court type. In Madras the decision of a village headman is final in suits for personal property up to R10, and if the parties consent he can determine similar suits up to R100 in value with or without the assisttance of a panchayet (local jury). The regulations under which these village courts exist, set out that powers were given to village courts, among other reasons, in order "to diminish the expense of litigation in petty suits, and to promote the speedy adjustment of such suits without subjecting people to the inconvenience attending a long absence from their homes." The returns of 1877 show 44,163 suits decided by village headmen out of a total of 196,343 suits decided by all courts in the Presidency. The District Munsifs in the Madras Presidency are invested under a local Act (No. IV of 1863) with a final jurisdiction "in suits of a nature cognizable by a Court of Small Causes when the debt damage or demand does not exceed in amount of value the sum of fifty rupees." It has been on occasions held by authorities conversant with Indian life that the people greatly value the privilege of appeal. Very recently in Bengal, when a scheme for improving the courts in the interior of the country was, after long discussion, submitted to the Home authorities, it was decided that final appellate jurisdiction could be only given to benches of two Judges (one European and one Native) up to a limit of R200 in value. And it was held that the majority of suitors would not be satisfied with any final

appellate jurisdiction short of the High Court in suits of higher value, until the new appellate benches to be established in the interior gained for themselves the confidence of the people.

15. It is desirable that these facts and these considerations should be kept in view in framing a scheme for remodelling the system of judicature in the districts to which the correspondence reviewed in this letter has reference; but the Governor General in Council readily admits that the circumstances which have occurred are such as to justify the experimental legislation which has been sketched out in the despatch of the Secretary of State. It will be for the Government of Bombay to consider how far it will be expedient to give jurisdiction in petty suits to the headmen of villages, to what extent and at what cost to the Provincial revenues the existing judicatories require to be increased, and how far a summary jurisdiction, not open to appeal, should be conferred on each grade of judicatory. The Bill will deal not only with the civil courts but with the other points for which it was intended to provide in the Bill which the Honourable Mr. Cockerell obtained leave to introduce into the Council of the Governor General in June last, and in the Bill which was to have been passed in the Council of the Governor of Bombay under the authority conveyed in the letters from the Department of Revenue, Agriculture and Commerce of the 1st July and 26th November 1878. In order that no avoidable delay may occur in carrying out this measure, the Governor General in Council has resolved to entrust the duty of preparing the draft of a Bill for the purpose of giving effect to it, to the Honourable T. C. Hope, C.S.I., who will be instructed to perform this duty in communication with the Government of Bombay and with the Home, Revenue, and Legislative Departments of the Government of India. Each Department will be instructed promptly to furnish Mr. Hope with all papers he may require, and with such assistance as may be necessary for preparing a Bill for submission to the Council of the Governor General for making Laws and Regulations. Mr. Hope will visit Bombay to consult with His Excellency the Governor in Council on the details of the Bill, as soon as he is prepared to do so.

16. There is one point, however, which, although it may possibly not involve legislation, appears to the Governor General in Council to demand further consideration from the Bombay Government, *viz.*, the possibility of adapting the assessment of the land revenue to the variations in the season. This question is discussed in paragraph 10 of the Bombay Government letter of the 6th April 1877. The Governor General in Council fully agrees in the view that, in ordinary cases and where the land revenue is moderate, it would not be good, either for the ryots or for the public treasury, that the land revenue demand should fluctuate. But the system, which is best for districts enjoying an ordinarily regular rainfall, may not be the best for the arid tract of the Central Deccan, where (it is said that) a good rainfall comes only once in three years. In view of the very great fall of prices, and the vicissitudes of season in the Deccan during the last few years, it would be desirable that the present Government of Bombay should consider whether the recent (1873—75) revisions of the revenue have given sufficient relief from an assessment, which was based, in part, on an unduly high estimate of the normal value of field produce in the Deccan. And, further, the Governor General in Council would wish the Government of Bombay to consider whether, in these four districts, or in parts of them, it would not be wise to have a varying scale of revenue demand to be applied in unfavourable seasons, whereby the normal assessment might be reduced by a certain percentage over an entire district, or division of a district, in the event of a failure of rain or other cause of serious damage to the crops.

No. 38. From C. BERNARD, Esq., C.S.I., Officiating Secretary to the Government of India, Home Department, to the Honourable T. C. HOPE, C.S I.,—No. 223, dated Fort William, the 26th February 1879.

I am directed to forward copy of a letter addressed this day to the Government of Bombay concerning the legislation to be undertaken for the relief of the Deccan ryots.

2. The Governor General in Council believes that you have studied the questions discussed in these papers, and has resolved to entrust to you the duty of framing, in consultation with the Government of Bombay, a draft Bill to give effect to the measures which it is proposed to introduce. I am to request that you will lose no time in placing yourself in communication with the Government of Bombay; and that as soon as you are prepared to enter into personal consultation with His Excellency the Governor in Council, you will proceed to Bombay for that purpose. The Home, Revenue and Legislative Departments will furnish you with all papers, and give all assistance you may find necessary for the preparation of a Bill, such as can be submitted to Council of the Governor General for making Laws and Regulations. The Bill, when prepared, should be submitted to the Government of India in this Department,

together with a memorandum by yourself descriptive of the Bill, of the authorities you may have consulted, and of the extent to which the Government of Bombay may be prepared to accept your Bill.

3. With reference to the proposal for founding rural Courts of conciliation, I am directed to forward copy of a suggestive article recently published in a vernacular newspaper of Northern India, touching the further utilization of the panchayet system.

From C. BERNARD, Esq., C.S.I., Officiating Secretary to the Government of India, Home Department, to Local Governments and Administrations,—No. 6—265 to 274, dated Fort William, the 6th March 1879. No. 39.

Despatches from the Secretary State, Nos. 4 and 63 of the 26th December 1878.
Letter to the Government of Bombay, No. 222, dated the 26th February 1879.

I am directed to forward copy of the papers marginally noted, concerning the measures which are to be taken for the relief of ryots in parts of the Deccan, and to request that the Governor General in Council may be informed whether His Grace the Governor in Council / His Excellency the Governor in Council / His Honour the Lieutenant-Governor (and Chief Commr.) / you consider(s) that it would be expedient in Madras, / Bombay, etc., to invest the courts of various grades with a summary jurisdiction; and when they possess such a jurisdiction, whether it should be extended; and if so, within what limits and subject to what restrictions as to the subject-matter of the suits.

2. The subject is one on which it would be desirable to obtain the opinions, not only of some of the ablest European judicial and revenue officers, but of intelligent Natives, official and non-official.

3. The Governor General in Council would also wish to be informed whether in the opinion of His Grace the Governor in Council / His Honour the Lieutenant-Governor (and Chief Commr.) / in your opinion there are any districts, or parts of districts, in Madras, / Bombay, etc., in which the plan of an assessment of the land revenue varying with the season to which reference is made in the 16th paragraph of my letter of the 26th ultimo, to the Government of Bombay, might be adopted with advantage.

P. S.—Copy of a suggestive article recently published in a vernacular newspaper or Northern India touching the further utilization of the panchayet system is appended for information.

The Revival of Village Panchayets. No. 40.

[Translation of an article from *Akhbar-i-Anjuman-i-Panjab*, dated the 27th September 1878.]

Syed Ahmed Khan Bahadur, C.S.I., Editor of the *Aligarh Institute Gazette*, has published a leader in his paper of the 7th September, page 290, refuting the arguments of a Native of Punjab for the revival of the village panchayet. The Syed says that the panchayet is an oppressive institution of the dark ages, quite unsuited to the present state of civilization, science and art. He is unquestionably an educated and enlightened gentleman, but his love of Western civilization has produced in him a strong dislike for everything Native, whether it be Native ideas, associations, arts or manufactures. He seems to forget that the very same Western enlightenment which has so much influenced him is advocating the revival of such useful institutions. As his eloquence has reached to the Legislative Council and secured for him a seat there, he has given his opinion beforehand, so that it might be taken as that of the educated Native community and have weight in the Council.

We beg to refer the Syed to Section 6 of the Act X of Civil Procedure Code for 1877, Madras. The village panchayets and munsifs have been established all through the Madras Presidency agreeably to this Act. We beg to ask him whether they are doing real good to the country, whether they are composed of the enlightened Europeans, and whether Madras is a portion of India? When they are doing their work satisfactorily in the Madras Presidency, there seems to be no *primâ facie* reason why the institution should not succeed in other parts of the country. We don't think that the village munsifs and the members of panchayets in Madras are all well educated men and thoroughly acquainted with all the laws and regulations in force in the country, but it is not essential that they should have such

an elaborate training. They may be intelligent and clever men, and such can easily be found in every part of the country. Some simple rules and regulations can with ease be framed for their guidance. But the technicalities of the law are quite different things from justice. The panchayet can very fairly decide the cases of its own village, as it fully knows the particulars. Syed Ahmed Khan remarks that although the law recognizes the decisions of panchayets as legal, the people hardly resort to them for the settlement of their disputes. The cause of this is that in the present times of freedom and liberty, when even children do not obey their parents, the village headmen have no authority and influence over the inhabitants of the village. On the contrary, they are themselves afraid of *badmashes*. They hear false evidences given in the courts, but cannot breathe a word. If their authority were restored, the *badmashes* would fear them, and the people would refer their disputes and private quarrels to them for decision. On account of their having no legal authority at present, they are not held in honour by the people.

Syed Ahmed Khan has served as Judge for a long time. We beg to ask him how many intricate cases he has referred to private panchayets and commissions every year for decision. If the working of the civil courts of a Presidency were well considered, more than one-fourth of all the cases decided might be referred to panchayets for final decision. One would have many occasions to admire the penetration of such panchayets in intricate cases. We ask Syed Ahmed Khan whether the following kinds of cases would not be better disposed of by a village panchayet than by a court of justice :—

(1) In a village which is situated 25 miles from the nearest court of justice, A's cattle injure B's crops. Now B has to seize the cattle and take them to the nearest police station which is, say, ten miles distance from the village. He then goes to the court, which is 25 miles distance from his house, to sue for damages, pays the court fee and the expenses of the witnesses, and his work also suffers during his absence from house. In spite of all this trouble and expense he may not be able to produce sufficient evidence for the conviction of the accused, and therefore, the accused may be acquitted by the court.

(2) In the same village a quarrel takes place between A and B, and A slightly hurts B. B goes to the court, which is 25 miles from the village, and submits a plaint, charging A with causing simple hurt. Four or five witnesses, both for the prosecution and defence, are then summoned to the court. Their dispute is ultimately settled by private compromise. Thus they are unnecessarily put to a great deal of trouble and expense, which would be avoided if there were a legally constituted panchayet in the village.

(3) In the same village A borrows R2 from B, and afterwards does not repay the amount to the creditor. B applies to the court for the recovery of his money and the debtor and the creditor are each put to an expense of R5 before the latter obtains a decree for the amount against the former.

(4) In the same village A holds a decree for R2 against B, and applies to the court for the execution of the decree. But before the decree is executed and B's property attached, B pays the amount of the decree to A. A, the decree holder, must then go to the court to certify to the fact of the payment. Suppose he is unable to walk 25 miles, he will have to hire a carriage. If there were a village panchayet, he might certify the payment to it.

We do not mean that every caste such as barbers, potters, kahars, etc., should have their different panchayets. In every large village or town a panchayet should be established, consisting of two, three, five or more respectable and influential persons of the village or town. When there are three or four small villages at a short distance from one another, a panchayet should be established in one of those villages, and its jurisdiction should extend over all of them. A few simple and short rules should be prescribed for the guidance of such panchayets. They might be entrusted with powers to hear and decide the following kinds of cases—

(1) Suits for damages for injury done to crops, trees, etc., provided the damages do not exceed R20;

(2) Suits for the recovery of debts up to R20;

(3) Disputes connected with marriage or caste matters;

(4) Disputes arising from the closing of thoroughfares;

(5) Cases of causing slight hurt;

(6) Cases of abusive language; and

(7) Offences against sanitary rules.

In all cases the plaints submitted to the panchayet might be on plain paper, and copies of judgments might also be granted by it on plain paper to the contending parties. If any party is dissatisfied with its decision, he might appeal to the regular court of justice within one month after the date of the judgment delivered by the panchayet. Otherwise the decision of the panchayet would be considered final and taken as that of a legally constituted court. In cases of marriage, relations and caste disputes the panchayet would have simply to ascertain whether the party made outcaste is really guilty. If the wronged party has a valid claim for damages thus sustained, he might then be authorized to file his regular suit in the civil court if it be beyond the panchayet's power to decide. The panchayet might also be entrusted with the duties of village marriage registrar. In every civil suit in which the value of the claim is above one rupee, the panchayet should levy a fee of eight annas from the party who loses the case. When a court executes a decree for money against the judgment debtor, and the judgment debtor pays the amount of decree to the decree-holder, the decree-holder should certify the payment to the village panchayet. In criminal cases the panchayet might fine up to rupees five. It might be also entrusted with the duty of exercising a check over the village *badmashes*.

If such village panchayets be established all over the country by the Government, the people will be spared a great deal of inconvenience and expense, and the courts will be greatly relieved from much miscellaneous work and from the trouble of deciding numerous petty cases.

The Local Government might be authorized to increase the power of such panchayets whose working is found quite satisfactory, and to decrease the powers of others where the working prove irregular and unsatisfactory in any way.

By the constitution of such panchayets the influence of the village headmen will be legally established, the *badmashes* will be kept from mischief, petty disputes and quarrels will be amicably and fairly settled, and courts will not be overworked with petty cases as is the case at present.

(True Translation.)

KASHI NATH,

The 2nd November 1878. *Officiating Government Reporter.*

From the Government of India, to the Right Honourable VISCOUNT CRANBROOK Her Majesty's Secretary of State for India,—No. 8, dated Fort William, the 7th March 1879. No. 41.

We have given careful consideration to the subject of Your Lordship's despatch No. 63, dated 26th December, respecting the measures to be taken for the relief of agriculturists in parts of the Deccan, and we have decided to prepare, in communication with the Government of Bombay a single Bill for early introduction into the Council of the Governor General.

2. We have now the honour to submit for Your Lordship's information copies of letters which we addressed on the 26th ultimo to the Government of Bombay and to the Honourable Mr. Hope, reviewing the previous correspondence on this important matter, and the observations and orders contained in Your Lordship's despatch. A copy of our previous correspondence with the Government of Bombay is also enclosed.

3. We have instructed the Government of Bombay to consider, with reference to the four districts of the Deccan which have formed the subject of the correspondence above referred to, how far it will be expedient to give jurisdiction in petty suits to the headmen of villages under a law similar to that which obtains in the Presidency of Madras, to what extent and at what cost to the Provincial revenues the existing judicatories require to be increased, and how far a summary jurisdiction not open to appeal should be conferred on each grade of judicatory. We have also intimated that the Bill, which it is now proposed to pass in supersession of the projects of law previously contemplated, should deal, not only with the civil courts, but also with the other points for which it was intended to provide in the Bill which the Honourable Mr. Cockerell in June last obtained leave to introduce into the Council of the Governor General, and in the Bill which was to have been passed in the Council of the

Governor of Bombay under the authority conveyed in the letters from the Department of Revenue, Agriculture and Commerce, dated, respectively, the 1st July and the 26th November 1878.

4. The duty of framing a draft of the proposed Bill has been entrusted to Mr. Hope, an additional Member of the Council of the Governor General, who is well acquainted with the Deccan, and who has been instructed to perform this duty in consultation with the Government of Bombay. Mr. Hope will visit Bombay at an early date for the purpose of placing himself in personal communication with the Governor in Council. He will not be debarred from proposing, in consultation with the Government of Bombay any provisions that may seem to be desirable outside the four corners of the papers referred to him.

5. We have also requested the Government of Bombay to consider whether, with reference to the very precarious nature of the rainfall in the districts in question, it would not be desirable to adapt the system of assessing the land revenue to the variations of the season, more than is possible under the present system, and with this view to introduce a varying scale of revenue demand, to be applied in unfavourable seasons, whereby the normal assessment might be reduced by a certain percentage over an entire district, or division of a district in the event of a failure of, or other cause of serious damage to, the crops. Should it be deemed expedient to take any action on this suggestion, Your Lordship will be addressed on the subject in our Department of Revenue, Agriculture and Commerce.

6. We have furnished the other Local Governments and Administrations with a copy of our letter to the Government of Bombay, under date the 26th ultimo, in order that they may consider the expediency of introducing into any or all of the territories under their charge the changes therein referred to in both the judicial and revenue departments of the administration.

7. We shall address Your Lordship again on the subject of this despatch as soon as we have settled the provisions of the Bill which we have ordered to be prepared.

We have etc.,

LYTTON.

A. J. ARBUTHNOT.

A. CLARKE.

J. STRACHEY.

E. B. JOHNSON.

W. STOKES.

RIVERS THOMPSON.

List of Enclosures.

Government of Bombay letter No. 2202, dated 6th April 1877.
Ditto ditto letter No. 308, dated 19th January 1878.
Ditto of India letter No. 404, dated 1st July 1878.
Ditto of Bombay letter No. 4579, dated 5th September 1878.
Ditto of India letter No. 696, dated 27th November 1878.
Ditto ditto letters Nos. 222 and 223, dated 26th February 1879.
Ditto of Bombay letter No. 584, dated 4th February 1878.
Ditto ditto Circular No. $\frac{6}{265-74}$, dated 6th March 1879.

No. 42. From H. H. RISLEY, Esq., Officiating Under-Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay,—No. 327, dated Fort William, the 17th March 1879.

With reference to paragraph 15 of my letter No. 222, dated the 26th February last, concerning the legislation to be undertaken for the relief of the Deccan ryots, I am directed to forward, for the information of His Excellency the Governor in Council, copy of a letter* addressed to the Honourable T. C. Hope, C.S.I., who has been asked to frame a draft Bill on the subject.

* No. 223, dated the 26th February 1879.

From J. B. PEILE, Esq., Acting Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Home Department,—No. 2056, dated Bombay Castle, the 18th April 1879. No. 43.

I am directed to acknowledge receipt of your letter No. 222 of 26th February 1879, reviewing past proceedings in connection with the subject of the proposed legislation for the relief of the indebted ryots of the Deccan, and communicating the intention of His Excellency the Governor General in Council to depute the Honourable Mr. T. C. Hope, C.S.I., to confer with the Government of Bombay for the preparation of a fresh Bill of the nature contemplated in the despatch of the Right Honourable the Secretary of State to this Government, Legislative, No. 4 of 26th December 1878.

2. In accordance with the instructions of the Government of India, a new draft *Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay* has now been prepared, which I am desired to forward herewith for submission to the Government of India. In the preparation of this draft the Governor in Council has had the valuable co-operation of the Honourable Mr. Hope, who has recently visited Bombay and discussed with the Members of this Government the various important points relating to the contemplated legislation, and it is believed that the Bill now submitted has his general concurrence.

3. The questions involved in the consideration of this matter have been very fully dealt with in a Minute, dated the 14th instant, by His Excellency the Governor, which is entirely concurred in by the other Members of this Government, and of which I am, therefore, desired to append a copy to this letter.

4. The point to which attention is most especially directed by the above-mentioned despatch from the Right Honourable the Secretary of State is the evil arising from the action of the civil courts and from the great distances at which those courts are held from the ryots' homes.

The methods by which the Governor in Council proposes to remedy this grievance are—

(1) by increasing the number of Subordinate Judges' Courts, so as to place every village within as reasonable a distance as possible from the seat of the court in whose jurisdiction it lies;

(2) by appointing, whenever convenient, two or perhaps more places for each Subordinate Judge to hold his court at on different days in the week or month;

(3) by extending the summary and final powers of the Subordinate Judges;

(4) by entertaining two or more Assistant Judges or Subordinate Judges for the special duty of inspecting and supervising all subordinate courts, and giving to them, as well as to the district Judges, certain express powers to stay any subordinate court's proceedings and arrange for cases being transferred or tried by a Bench;

(5) by simplifying the procedure of the Subordinate Judges in cases which they are empowered to try summarily;

(6) by appointing Village Munsifs, wherever possible, to try, summarily and without appeal, suits for money up to R10;

(7) by appointing Conciliation Judges for the amicable settlement of disputes between agriculturists and other persons.

5. It will be observed that the first six of these proposals do not affect the ryots exclusively. Their object is to improve the system of civil judicature generally, and thereby to enable the ryots, who form the bulk of the population of the four districts in question, to obtain cheaper and speedier justice, and with less trouble to themselves than they are now able. The seventh remedy, the appointment of Conciliation Judges, it is proposed in the first instance to limit to ryots' cases, because the experiment will be a novel one in India, and it is thought prudent to watch the result of it in a special class of cases before extending its scope.

6. Legislation is unnecessary for the purposes of the first and second of the above proposals, as Sections 21 and 23 of the Bombay Courts Act, 1869, already enable Government to take the requisite steps. But both of these proposals, as well as the fourth proposal, will necessitate a very considerable additional outlay on the civil administration of the Deccan, which the Governor in Council is compelled to admit is absolutely necessary, however much he could wish for financial reasons, that it were not so. As at present advised, he is of opinion that it will suffice to increase the number of Subordinate Judges in the four districts in question by 50 per cent., *i.e.*, from 24 to 36. The probable cost of this addition is shown in the table

appended to this letter. In the establishments therein estimated for there are two kurkuns (one on R25 and one on R12) less than in the smallest of the existing establishments, but it is thought that, when 36 courts are employed to do the work at present performed by 24, some such reduction of establishments will be feasible.

7. With regard to the extension of the summary powers of Subordinate Judges, I am to explain that this Government already possesses the power under Section 28 of the Bombay Courts Act of investing any Subordinate Judge of the 1st or 2nd class with the jurisdiction of a Court of Small Causes in suits up to the amount of R500 and R50 respectively. This jurisdiction has indeed already been conferred upon several Subordinate Judges in the Deccan, but the system of conferring it from time to time by special notifications in the official *Gazette* is productive of considerable inconvenience and uncertainty, and it is thought better that every Subordinate Judge should, as such, possess the jurisdiction. After full consideration, the Governor in Council has also come to the conclusion that Subordinate Judges of the 2nd class may safely be entrusted with summary powers in suits up to the amount of R100, and that it will be advisable thus to extend their powers in order both to increase the number of cases which will be decided summarily and to give the Subordinate Judges more time for the disposal of other work; and for the benefit of the ryots, it is proposed (Section 4 of the Bill) that suits relating to a mortgage transaction in which the mortgagor is an agriculturist, and any suit for an account brought by an agriculturist, shall be added to the class of suits which under Section 6, Act XI of 1865, are already cognizable by courts invested with Small Cause Court powers.

8. But whilst wishing thus to extend the number and the importance of the cases which may be disposed of summarily, and without appeal, by Subordinate Judges, the Governor in Council thinks it necessary to make special provision in the Bill for a constant supervision and control of their proceedings, either by an Assistant Judge, or by a good Subordinate Judge, specially selected for the purpose. This forms the fourth of the above proposals, and it is anticipated that it is one which will effect much good. At present the subordinate courts are, it is thought, too little subjected to examination and scrutiny. District Judges, being also Sessions Judges, are only able to visit them at rare intervals, and, owing to various reasons, no inspection of them takes place sometimes for two or three years together. It is proposed therefore (Section 7 of the Bill) to appoint two officers (either Assistant Judges or Subordinate Judges), each of whom shall, during the fair season, be employed in visiting and examining into the work of the subordinate courts of two districts, and during the trains, when travelling is impossible, shall perform the usual duties of an Assistant, or Joint Subordinate Judge in one of such two districts as may be required. To carry out this proposal it will be necessary to add either two Assistant Judges or two Subordinate Judges of the 1st class to the existing establishments. The pay of a third grade Assistant Judge is R600 and of a third grade 1st class Subordinate Judge R500 per month. Assuming that Government find it expedient to appoint one Assistant Judge and one Subordinate Judge, the additional cost will be R1,100 per month for twelve months in the year and R200 per month for travelling allowances (R100 eight) for eight months in the year, in all R14,800 per annum. But although the two additional officers whom it will be necessary to retain will be entertained on the lowest salaries of their class, Government will not of necessity appoint them to the duty in question. The best Assistant Judge or 1st class Subordinate Judge available in any grade will be selected for the purpose, and the vacancies thus created will be filled by the two additional appointments.

9. In order further to augment the usefulness of the officers who will be selected for this duty, it is proposed (Section 7 of the Bill) to invest them, if the District Judge so directs, with the power at present possessed only by the District Judge himself under Section 25 of the Civil Procedure Code, of transferring suits to their own file, or to other subordinate courts, and also to confer upon them and upon the District Judges a new power of forming Benches of two or more Judges—in whom they may, if they think fit, include themselves—for the disposal of important cases (Sections 6 and 7 of the Bill). As a further safeguard against hasty or illegal decisions a section has been inserted (Section 32) rendering Subordinate Judges' unappealable decisions liable to revision and correction by the superior courts in the same way that the decisions of criminal courts are revised, and it will be a standing instruction to the supervising Assistant or Subordinate Judges to go carefully through the records of the subordinate courts and bring to the notice of the District Judge every case in which his interference appears to them to be called for.

10. A considerable share of the dissatisfaction caused by the civil courts as at present constituted is believed by many to be attributable to the intricate rules of procedure by which they are bound. The Governor in Council thinks, therefore, that the experiment may be tried of introducing a more simple form of procedure, based, to a great extent, on the local Mamlatdars' Courts Act (Bombay Act III of 1876). In carrying out this idea it became necessary to consider whether it would be advisable to limit the applicability of the new procedure to agriculturists' cases, and to create special courts, or to invest the existing courts with special jurisdiction, for the trial of such cases. To the creation of a new class of courts the Governor in Council thinks there are weighty objections. The salary which could be offered to the Judges would not be attractive enough to command the services of men of the same class as the present Subordinate Judges, and it seems to the Governor in Council to be most undesirable to lower the standard of qualification for admission to the subordinate grades of the judicial office. The establishment of special civil courts for the benefit of one particular class of the community would also form a precedent of very questionable expediency. On the other hand, it would be obviously inconvenient for the Subordinate Judges to have to follow one law procedure in cases to which the code of civil of procedure applies, another in Small Cause Courts' cases, and a third in agriculturists' cases; and it would be unreasonable to require the Judges to apply one law of procedure in a suit if an agriculturist is a party to it, and quite another law if the parties are not agriculturists. If, therefore, it be admitted that a simplification of the existing procedure in summary cases is necessary, the only course seems to be to make the amended law apply to all such cases which a Subordinate Judge may have to try, whether an agriculturist be a party thereto or not. This is, therefore, the reason why by the provision of Sections 8—20, 30 and 31 of the Bill it is purposed to supersede the present Small Cause Court procedure law entirely.

11. With regard to the sixth of the above-mentioned proposals, I am desired to say that the Madras Regulation IV of 1816, under which Village Munsifs are appointed in that Presidency, contains many provisions which are unsuited to this Presidency and to this time. The village headmen in this Presidency could not now, as a general rule, be entrusted with judicial powers. But the knowledge that such of them as show themselves by superior education and good character fitted for the office will be invested with such powers, may in time induce them to qualify themselves, and there are some on whom a very limited jurisdiction might even now be conferred with advantage. Here and there, too, a good district hereditary officer or an Inamdar, or a retired Government servant, may be found to whom similar honorary powers might be given. Wherever any such jurisdiction existed, it would *pro tanto* exclude that of the Subordinate Judge, and so relieve the latter of a nember of petty suits. But to ensure success, the procedure required of such honorary Village Munsifs ought to be of the simplest possible character, and the sections in the Bill which deal with this matter (Nos. 21—28) have been framed with an express view to this end. And as the appointment of such Munsifs would be at first purely experimental, the Governor in Council is not prepared to recommend that they should have jurisdiction is suits exceeding R10 in amount.

12. His Lordship the Secretary of State having signified his approval of some attempt being made to introdnce courts of conciliation, on the French model, into the Deccan districts, the Governor in Council has given this matter his most careful consideration, and the provisions which he is in consequence prepared to support have been embodied in Part VI of the Bill. The success of courts of this class in this country will depend mainly upon the character and local position of the persons appointed to be Conciliation Judges. It does not seem desirable that the office of Conciliation Judge should be associated with that of an ordinary Civil Judge. Such an office might be greatly abused by a Judge anxious to diminish the amount of his judicial work, and there would be great danger of his contracting a bias during the informal proceedings before him in his capacity of Conciliation Judge, which he would be unable to shake off when he came to try the matter in dispute judicially. It seems therefore necessary that Courts of Conciliation should, with perhaps rare exceptions, be entirely dissociated from the ordinary courts; and that the persons to be appointed Conciliation Judges should be specially selected with reference to their local standing and personal influence with the people. The Governor in Council proposes, therefore, merely to take power to appoint such Judges wherever it may be found practicable, and is of opinion that the appointment should be an honorary one.

13. The above comprise all the new proposals which the Governor in Council deems it necessary to submit for the purpose of ameliorating the civil judicial administration of the

four districts in question. But the Bill contains substantially the same provisions regarding (1) insolvency, and (2) inquiries into money-claims against agriculturists and the limitation of their liability for interest and for ancestral debts, and (3) the sale of land in execution of decrees as were contained in the draft Bill forwarded with my predecessors's letter No. 308 of 19th January 1878. Those principles have, it appears, been virtually approved by their Lordships the present and the late Secretaries of State, and Lord Cranbrook, in his despatch already adverted to, has desired that the measure now to be introduced shall be founded upon them.

14. It will be observed, however, that the procedure in insolvency cases has been somewhat simplified in the present Bill (Part V), and that the Government of Bombay now propose that the minimum amount of debt which shall qualify an agriculturist to be declared an insolvent shall be reduced from R100 to R50. Simultaneously with the introduction of a complete insolvency law it appears to the Governor in Council that the agriculturists to whom it will apply may be exempted from liability to arrest or imprisonment for debt. This has accordingly been provided for in Section 40; and in Sections 57—60 certain new provisions have been introduced, which it is believed will be found to be peculiarly suitable to the circumstances of the agricultural class.

15. The sections relating to enquiries into money-claims against agriculturists have been carefully re-considered with reference to the correspondence ending with your letter No. 696, dated 27th November last, and the Governor in Council trusts that in the shape in which they now appear (*vide* Sections 33 and 34, and also Section 3 of the Bill) they will be found less open to the objections which were entertained to them by the Government of India in their original form.

16. The Government of Bombay are of opinion that it is essential to the success of their proposals with regard to Courts of Conciliation and Village Munsifs that the court fees chargeable upon their proceedings or processes should be either remitted entirely, or fixed at very low rates, sufficient only to cover the actual cost of maintaining these courts. This Government would also gladly see some reduction allowed in the court fees leviable in suits of the nature which it is proposed to empower Subordinate Judges to try summarily. But it has not been thought necessary to insert anything in the Bill on this subject, as the Government of India have power under the existing law to remit court-fees whenever they deem fit, and a new Bill relating to court-fees generally is already, it is believed, under their consideration.

17. With regard to the question of the exclusion of pleaders, the Governor in Council is clearly of opinion that legal practitioners should be barred from appearing on behalf of any party before a Conciliation Judge or a Village Munsif. But with respect to proceedings in the ordinary civil courts the question is one of some difficulty, and upon the whole, whilst not prepared to advocate their absolute exclusion in any case in those courts, the Governor in Council has arrived at the conclusion that the experiment may be tried of disallowing their appearance in cases under R100 in amount except with the special permission of the court. In order, however, to prevent these provisions with respect to legal practitioners (Part VII of the Bill) from operating detrimentally in the case of illiterate parties who have no knowledge of law or of the ways of the courts, it is proposed to allow any relative, servant or dependant of a party to be employed either conjointly with, or in lieu of such party; and a suggestion, to which reference is made by the Deccan Riots Commissioners in paragraph 130 of their report, has been acted upon so far as to empower the Subordinate Judges to require the Government Pleader to undertake the defence of the debtor in any case in which the creditor is allowed to appear by counsel and the debtor is too poor to pay for a similar advantage.

18. The Governor in Council has deemed it desirable to introduce into the present Bill (Part VIII) the sections relating to Public Notaries, which were suggested in paragraph 17, clause 3 of Mr. Ravenscroft's letter to your address No. 4579, dated 5th September 1878. In your reply to that letter No. 696, dated 27th November 1878, paragraph 12, you pointed out certain objections to the sections in question, but these have, it is hoped, been obviated by denominating the officers whom it is proposed to appoint "Village Registrars" instead of "Public Notaries," and by placing those officers under the orders of the Inspector General of Registration, and empowering the latter (Section 77) to supervise and regulate their proceedings and to provide for the custody of their records. I am to add, in in further explanation of the necessity for those sections, that although Section 34, clauses (*a*) and (*b*), and Section 58, clause (*c*) of Act III of 1877, do already provide for inquiry being made by registering officers into the fact of the execution of such instruments as come before them and into the

identity of the parties, and to record any payment of consideration made in their presence in respect of any such instruments, the class of instruments to which that law applies is a limited one, whereas the object of this Government's proposal is that *every* instrument to which an agriculturist is a party shall fall within its purview (*vide* Section 72 of the Bill), and that such instruments shall not be merely registered by the Village Registrars, but shall also be written by them.

19. The VIIIth part of the present Bill is based upon Sections 8—11 of the draft Bill for the prevention of frauds submitted along with the Deccan Riots Commissioners' Report, (pages 119—121). It is thought that the necessity which it is thus intended to throw upon creditors of giving their debtors receipts, or pass-books or statements of account whenever demanded, on pain of penalty in case of default, will strengthen the hands of the ryots and enable them to obtain written evidence of their transactions with their money-lenders.

20. With reference to the concluding paragraph of your letter, I am desired to say that the Governor in Council has given his best consideration to the question of the possibility of superseding the fixed rates of land-revenue assessment at present in force in the four districts in question by a scale of rates varying, as suggested by the Government of India, with the favourableness of the seasons. The proposal is one which it is anticipated there would be very great difficulty in adopting, but the Government have the matter still under their consideration, and should it be found feasible to recommend any alterations in the existing system of settlement of the nature suggested, a separate communication will be addressed to the Government of India on the subject.

Table showing the probable cost of entertaining twelve additional second class Subordinate Judges (vide *paragraph 6 of the accompanying letter.*)

	R	R
Salary* of each Sub-Judge per month :—	...	150
Establishment for ditto—		
One Nazar	45	
One Karkun	30	
One ditto	20	
One ditto	15	
One ditto	12	
One Naik	9	
Three Peons at R6 each	18	
One Menial	6	
Contingencies	25	
	—	180
Total monthly cost for each		330
Ditto for twelve		3,960
Annual cost for twelve		47,520

* *Note.*—The lowest salary of a Subordinate Judge is at present R200, but it is thought that, with the good prospects of promotion before them which the department now offers, there will be no difficulty in obtaining twelve new men of the same class as the present Subordinate Judges to begin on a pay of R150. All the new men will, of course, not necessarily be posted to the Deccan districts.

FURTHER PROPOSALS FOR LEGISLATION REGARDING THE INDEBTED RYOTS OF THE DECCAN. No. 41.

Minute by the Governor of Bombay dated 14th April 1879.

I have given my best attention to the despatch of the Secretary of State of the 26th December last, regarding legislation in respect to the indebted ryots of the Deccan (including the Districts of Poona, Satara, Ahmednagar and Sholapur), and to the letter from the Government of India of the 26th February last, upon the same subject. I have, as directed by the Government of India, carefully consulted Mr. T. C. Hope, who, as Member of the Legislative Council of the Governor General, will presumably have charge of any Bill which may now be introduced into that Council. I have now to record the following observations for the consideration of my Honourable Colleagues.

The previous proposals by the Government of Bombay on this subject are stated in my previous Minutes of the 12th November 1877 and the 30th August 1878. These proposals are thus summarised in paragraph 6 of the Secretary of State's despatch above-mentioned, as quoted below :—

A despatch was received from Your Excellency in Council in February of the present year enclosing the draft of a Bill for the relief of the indebted agriculturists in the Presidency of Bombay, and which you desired to have introduced into the the Council of the Supreme Government.

That Bill contained three main principles—

(1) That the courts should be obliged to enter into the merits of every money claim, whether secured by bond or not, and should only award such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest or a larger amount of interest than the principal sum.

(2) That the principle of the Insolvent Act as prevailing in the Presidency Town should be applied to the Deccan agriculturists.

(3) That land should not be sold in execution for debt, unless specially pledged in a bond duly registered.

Lord Salisbury, although not fully satisfied with all the principles contained in this measure, thought the occasion for attempting remedial legislation to be so urgent, that he sanctioned by telegram the introduction of the Bill, being quite willing that the experimental legislation contemplated in the Council of the Governor General should be attempted. I also am of the same opinion.

After adverting to the insufficiency of our civil courts for the satisfactory disposal of the litigation between the indebted ryots and the money-lenders, the Secretary of State proceeds thus in paragraphs 28 to 37—

28. I am extremely unwilling at any time, but especially now, to suggest any increase to the cost of administration, but if it be made manifest that our courts of justice are inefficient in these special cases, and that our Judges admit that they have not time to enquire into the real facts by a thorough investigation, I would suggest that, although an addition to the cost of administration is very much to be deprecated, it is imperative to remedy the defects here pointed out. A re-distribution of expenditure might be made, and I observe that it is stated in the Commissioner's report that 88 subordinate courts bring in a revenue of R16,89,744 and that the expenditure, including salaries of Judges, is only R6,90,717.

29. Evils such as have been depicted above, arising out of the costliness and inacessibility of the courts of justice, though of a much slighter character, existed in England also; and the remedy suggested was the establishment of Small Cause Courts. This innovation, after having been opposed sturdily for many years, was finally adopted, and has proved so eminently successful that nearly every year witnesses some extension of their powers. In India also the institution has been partially adopted. But it is from France that the most important evidence can be obtained of the value of local courts.

30. * * * * * * * * *

It will be observed that the early meeting of the parties before the Judge in order to produce an amicable settlement of the suit, which is so strongly insisted upon by Mr. Bentham, is spoken of by the French authorities in the highest terms.

The Secretary of State then seems to sum up his wishes on this matter thus, paragraphs 31 to 33—

I cannot doubt that the existence of courts with summary jurisdiction and without appeal up to a limited amount, and possibly with the exclusion of professional pleaders placed in localities within reach of the suitor's home, would tend to remove many of the evils which have been brought to notice." * * * It is obvious that the summary jurisdiction to be attributed to Subordinate Judges should only extend to a very limited amount. * * * * The principle of summary jurisdiction without appeal might be conferred experimentally on all Civil Judges of the Deccan with great benefit.

Lastly, the Secretary of State directs, paragraph 34, that "a comprehensive measure should at once be proceeded with, founded on the principles which I have indicated, and on those which Lord Salisbury had previously sanctioned."

From the foregoing quotations I gather that in this proposed legislation the main principles for which the Government of Bombay have contended are virtually approved on the condition that the judicial machinery be strengthened, the number of civil courts augmented, and the procecure in some respect improved. It is to this condition, then, that I have to apply myself.

There is no doubt that the number of the civil courts ought to be augmented in the

Deccan, and that the existing courts are often too far from the homes of the people, as will be seen from the table given below :—

Table showing the distances at which villages in the territorial jurisdiction of the Subordinate Judges of the Deccan are situated from the courts to which they respectively appertain.

Name of District.	Name of Court.	Number of Villages.												
		Within 5 miles.	Within 10 miles.	Within 15 miles.	Within 20 miles.	Within 25 miles.	Within 30 miles.	Within 35 miles.	Within 40 miles.	Within 45 miles.	Within 50 miles.	Within 55 miles.	Within 60 miles.	Total.
Poona.	1st class Sub-Judge's Court, Poona	28	76	32	44	24	41	12	53	2	...	...	...	312
	2nd class Sub-Judge's Court, Junnar	31	60	43	16	9	2	...	...	...	...	...	...	161
	Do. do., Khed	20	54	44	41	34	25	8	6	...	...	...	...	232
	Do. do., Talegon	9	45	31	23	5	5	...	...	...	...	...	...	118
	Do. do., Patas	4	21	44	19	40	19	20	14	13	14	6	4	218
	Do. do., Wadgaon	15	63	35	50	1	1	...	...	...	...	...	...	165
Satara.	Sub-Judge, 1st class, Satara	26	76	29	...	...	1	..	...	...	...	...	...	132
	Do. 2nd class, Wai	18	50	47	34	50	61	58	40	25	...	...	...	383
	Do. do., Karad	10	42	17	20	96	42	...	...	...	...	...	...	227
	Do. do., Rahimatpur	5	45	40	42	26	12	...	...	...	...	...	...	170
	De. do, Vitta	5	47	34	29	13	2	...	...	...	...	...	...	130
	Do. do., Ashta	4	14	38	36	25	21	...	...	...	...	...	...	138
	Do. do., Tasgaon	5	20	17	7	...	...	...	...	...	...	...	...	49
	Do. do., Dahiwari	15	39	52	20	...	...	...	...	...	...	...	...	126
	Mootalik Inamdar of Karad	...	1	...	...	...	...	...	1	...	...	...	...	2
Ahmednagar.	1st class Sub-Judge's Court, Ahmednager	23	42	14	39	27	26	23	3	...	...	...	...	247
	2nd Do. do., Sangamner	25	41	48	46	45	39	10	1	...	...	...	...	255
	Do. do., Newase	18	56	66	53	35	16	...	...	...	...	...	...	244
	Do. do., Kade	5	1	8	26	52	50	37	22	9	...	...	...	210
	Do. do., Rahuri	7	12	42	32	55	30	26	28	13	5	...	...	250
	Do. do., Shrigonda	12	27	42	52	26	6	3	...	...	...	...	...	168
Sholapur.	2nd class Sub-Judge's Court, Sholapur	15	65	38	28	3	1	2	...	...	...	...	...	152
	Do. do. Barsi	16	40	38	28	24	12	12	14	1	...	...	...	185
	Do. do. Madha	8	23	14	54	42	23	4	11	4	1	...	...	184
	Do. do. Pandharpur	8	33	25	27	41	21	8	17	7	5	...	...	192

I would submit, however, at the outset, that improvements in the substantive law relating to the indebtedness of ryots is quite as essential as the multiplication of courts. If that law be improved, as we propose, then its administration will be all the better for more courts. But if it were not so improved, then the multiplication of courts might not prove an advantage: indeed, might even prove a disadvantage; for in that case the money-leder, who is generally the party to invoke the action of the courts against the ryot, would enjoy increased facilities. If the courts are, in the present unimproved state of the law, in any degree engines of oppression against the ryot, then their augmentation would only have the effect of bringing the oppressor nearer to the oppressed.

But anticipating improvement of the law respecting indebtedness, I would recommend the early augmentation of the civil courts in these four districts by fifty per cent. There are now 24 Subordinate Civil Judges (Natives) employed in these four districts. I would increase them by twelve, bring their number up to 36. The additional cost is shown in a table of which an abstract is given in the margin: it amounts approximately to R48,000 per annum, which charge will have to be borne by the Provincial finances of the Bombay Presidency. Although, as the Government of India are aware, it is hard for our Provincial finance—reduced as they are by the recent famine, and with continued demands upon them by reason of the still existing distress—to bear additional burdens, still this much of extra cost must apparently be borne. I am far from saying that the proposed augmentation is sufficient for the needs of the people; but it seems to be as much as we can afford at present, and it is susceptible of further expansion hereafter according as our means may permit.

	R
Twelve 2nd class Sub-Judges, at R150 per month each	1,800
Twelve establishments for Sub-Judges, at R180 per month each	2,160
Cost per month	3,960
Cost per year	47,520

I think that two Assistant Judges or Subordinate Judges ought to be appointed to aid the District Judges in these four districts (Poona, Satara, Ahmednagar and Sholapur) in supervising and inspecting the courts of the Subordinate Judges thus augmented in number. Such officers might be called Supervising Assistant Judges or Sub.-Judges, and would be chosen from among the Assistant Judges or Subordinate Judges, and would be added to these establishments. The cost of that measure is noted in the margin; it also would have to be borne by our Provincial finances.

	R
Two officers—one at R600 and one at R500 per month	1,100
Cost per year	13,200
Travelling allowance for ditto at R100 per month each for eight months in the year	1,600
Total cost per year	14,800

	R
The total proposed cost would be annually,	47,520
	14,800
TOTAL	62,320

This is the least which we can propose. Hereafter, if circumstances shall be favourable, we may be able to propose more.

I have considered the possibility of appointing Native Civil Judges, of a lesser status than the present Subordinate Judges, for the disposal of cases between money-lender and ryot. But I am clearly and strongly of opinion that this is not advantageously possible. After long experience and much labour we have succeeded in securing Native Civil Judges of good general education, sound legal training, trustworthy character, fair social position, and promising prospects. These several circumstances, as factors acting in combination, have brought about a considerable degree of judicial efficiency, which efficiency would be sacrificed exactly as any or all of the above-named factors should be lost. Now these factors would be all either impaired or relinquished if inferior Natives of lesser status were to be appointed Judges. Whatever may be the opinion regarding our civil law and procedure, there is general acknowledgment of the comparative purity and trustworthiness of the administration of the law by the present civil courts; and this is *per se* a vast gain in comparison with the results of former times. This gain we should lose if we appointed inferior Judges on scales of salary materially less than those now allowed. It were easy to enlarge on this subject; but probably the foregoing mere abstract of considerations will indicate the reasons why I should most earnestly deprecate any attempt to supplement our existing judicial agency by inferior Native Judges.

I then come to the important point of Conciliation Courts, somewhat on the model of those in France. I would take power to appoint selected Native gentlemen to be Conciliation Judges. Such persons would have to be very carefully chosen. Some would certainly be found, perhaps even many might be found; the possible number of them could not be exactly stated beforehand without actual trial of the system. We should have to proceed tentatively and judiciously. But if the plan at all succeeded, then many suitable persons would be soon forthcoming. The reasons for carefulness are manifest. If good and faithful men are chosen, then there will be no abuses, and the conciliation will answer. But if, as might easily happen, men thus appointed were to prove unfaithful to their trust, then conciliation would be worse than a failure; abuses would spring up, new evils would be added to any evils which might have previously existed; and some scandals would occur to bring discredit on the scheme. While some of the Natives in the Deccan, whose names might suggest themselves for selection, would be good men, many might be otherwise. Without any disparagement of the Native gentry of the Deccan, I only adduce what is known to every one when I remark that there are many Maratha Brahmins who, though intelligent and influential, would not ordinarily be selected for an honorary office like that of Conciliation Judge, which affords great scope for intrigue to those who might be minded to exercise it. Moreover, in the present social state of the Deccan, much temptation would unavoidably surround the position of a Conciliation Judge, mediating between money-lenders and ryots. The money-lenders form a powerful class; many individuals among them are wealthy and influential. They of ten have on their books, not only the peasantry, but also many of the Native gentry. They are better acquainted than any other unprofessional class with the mode of bringing the law and its agencies to bear on debtors. Unless, therefore, the Conciliation Judges were well chosen, suspicion would soon become rife regarding collusion on their part with the money-lenders. At the best, the fidelity of Conciliation Judges can be ensured only by the moral effect of local opinion on the spot, and the vigilance of supervising authority.

The question then arises as to what functions should be entrusted to the Conciliation Judges? In the first place, it appears to me that every money-lender who has a claim against a ryot should be obliged to bring that claim to the notice of a Conciliation Judge before instituting a suit in a civil court. Such suit should not be entertained by the court except on production of a certificate signed by the Conciliation Judge to the effect that both the parties had appeared before him and had been unable to agree, or that the claimant having preferred his claim, the ryot had either declined to attend, or, after having been warned to attend, had neglected to do so. By these means the money-lender would not only have an opportunity of settling his claim out of court, if so disposed, but will be actually obliged to try to do so, if it be possible. The ryot will also have the opportunity of so settling, if he chooses to do so. But if he prefers that the case should be tried by a regular court, he should not be compelled to attend before the Conciliation Court. He should be warned to attend, and every possible precaution should be taken to make sure that the warning shall reach him. If then he does not attend, it must be that he has reasons for deliberately preferring the formal tribunal of the civil court. It would be better in that case that he should be heard by the civil court; and having declined the offices of the Conciliation Court, he cannot complain of the procedure of the civil court by whom he has elected that his case should be tried.

Having carefully considered whether the ryot should be compelled to attend before the Conciliation Court against his will, I think that he should not be so compelled. If the Conciliation Judge had the power of compelling the attendance of the ryot to answer the money-lender's claim, he (the Judge) would have a power which would be liable to abuse. Though he would not have the power of deciding or enforcing his decision, if he formed one, still he would, by compelling attendance, be able, if so disposed, to put great pressure on the ryot to admit or to compromise the claim. Such power of applying pressure—by an educated man of position upon an uneducated and humble man, on a claim preferred by a man generally of some education and wealth—is a power that ought not to be conferred upon honorary Conciliaation Judges in the present state of society in the Deccan. I state this with confidence, appealing to the knowledge of those who are aquainted with the Native gentry of the Deccan, from among whom the Conciliation Judges would have to be selected.

For the same reasons I would not give the Conciliation Judge the power of summoning witnesses of his own motion. He should, however, not only be empowered, but bound, to hear any witnesses whom either party might bring forward.

Similarly he would be bound to inspect any papers or documents which either party might adduce.

He would record any decision at which he might induce the parties to arrive. And he would keep such registers and records as might be prescribed; the records would, however, be of brief and simple character.

Thus he would be a Conciliation Judge in reality, as well as in name, without reaching the authority or status of a Judge. If persons of this description were to be made virtual Judges, were to be vested with portions of judicial authority, such as summoning the ryot and the like, they would be exposed to temptations to them sometimes irresistible, they would then become unpopular with the peasantry, and the Government would find that, in trying to do good, it had in result done harm. But if they be retained as Conciliation Judges, and nothing more; if the extent to which the peasantry shall elect to come before them shall depend on their commanding public confidence; if their power to settle cases shall rest on their moral influence with the parties; then they may prove very useful; may dispose of many cases which would otherwise have remained standing disputes between the parties, may often save the ryot from the process of the law, or may relieve him from the anxiety caused by claims hanging over his head.

I have given particular attention, as requested by the Government of India, to the system which has long existed in the Madras Presidency, whereby village headmen are empowered to decide summarily without appeal small civil claims. From my own experience in that Presidency I am not sure whether local opinion is unanimous as to the value of the work thus preformed—a value which cannot be well tested, as no detailed record is kept. Nevertheless, nominally a great amount of work is thus done, measured by the number of suits returned as decided, as well as by the proportion which such return bears to the aggregate returns of civil litigation in the Presidency. And after making every reasonable abatement, I do not doubt that much real work is thus done, to the great convenience of the people, and that the status

and character of the village headmen are hereby raised, generation after generation. I am willing, indeed anxious, to attempt the gradual introduction of this plan into the Bombay Presidency.

The introduction, however, would be very gradual, for many of the village headmen in the Deccan are not deemed trustworthy by our District Collectors; many also are illiterate. Still out of a large body of men some will be good, even though the general standard of the body be low. And as education shall spread from one generation to another, more and more good men will be forthcoming. Moreover, the vesting of them with this limited degree of judicial responsibility will have an elevating effect on these men and will tend to make them trustworthy.

Mostly the persons selected would be the village headmen, who represent an ancient and established institution. The selection need not be limited, as in the Madras Presidency, to the village headmen, but might fall upon any fit person in or near the village.

The safeguard in constituting these petty honorary courts is really this—that the value of the cases thus entrusted to such village tribunals would be small—R10 in each case. Such cases would be between ryots aad farm-labourers, or shopkeepers, or artisans, and the like. The disputed transactions between money-lenders and ryots would not be included in this category—most of these cases would be for amounts exceeding R10. Thus these village tribunals would have nothing to do with affairs between ryots and money-lenders—a class of cases with which they would be utterly unfitted to deal, inasmuch as the money-lenders would have undue influence with them. But they would dispose of much petty business which now goes to the civil courts, occupying some of the time of those courts, which time might be given to more important cases. About one-sixth of the civil suits in the Deccan are understood to be for values under R10, though the statistics do not enable us to discriminate the exact proportion. From this may be estimated the relief which would be afforded to the civil courts by the establishment of these village tribunals, if they could be established everywhere.

Their procedure would be summary, and there would be no appeal. But the District Civil Judge would have power *ex proprio motu*, to revise any of their decisions which he might have reason to think unjust.

As the value of these cases is so small, I think a power might be entrusted to these unpaid tribunals, which in larger civil causes could not be entrusted to any honorary tribunal.

Professional pleaders should be excluded from appearing before Conciliation Judges and village tribunals. After some consideration, I think they should be excluded from the regular civil courts in cases below R100 in value, power being reserved to the Judge to admit a pleader in any case, recording his reasons for the admission.

Thus I hope that the augmentation of the number of Subordinate Judges; the establishment of Conciliation Courts for the voluntary settlement of claims out of court; the empowering of village headmen or other selected persons on the spot to decide summarily all the pettiest sorts of suits; the strengthening of the agency for inspection of civil courts in the interior of the country by appointing two supervising Assistant or Subordinate Judges; will improve and enlarge the means of disposing of civil causes, and will enable the Subordinate Judges to give more time to those questions between money-lenders and ryots which cannot be settled out of court. And I think that all this may be done, if not to the full extent desirable, still to a considerable extent, without imposing on our Provincial finances a burden greater than they can bear.

The increase of the establishment of Subordinate Judges is a matter of executive arrangement, and does not require legislation. But for all the other arrangements above-mentioned, egislation is required.

Then as regards summary jurisdiction on which so much stress is justly laid by the Secretary of State, it is to be remarked that already we can by law invest the Subordinate Judges with powers of Small Cause Courts: some Subordinate Judges are thus invested, and the remainder can be so invested. It is therefore better at once to declare by law that all these Judges shall have these powers. The Small Cause Court jurisdiction covers generally those cases between money-lenders and ryots which do not involve mortgage or other transfers of land. It can, by legislation, be made to cover these transfers also. And for the lower grades of Native Judges the limit of value of suits may be raised from R50 to 100.

In some respects the procedure of the Small Cause Courts may be improved in order to suit the cases between money-lenders and ryots; and for this also legislative provision can be made.

As the operation of Small Cause Courts, with summary powers and without appeal, will be extended, I think that there ought to be with the District Civil Judge a power to revise of his own accord the decision in any case where he might think that injustice had been done. For this we shall make provision.

The provisions already proposed regarding insolvency for the relief of indebted ryots and other improvements in law, will render imprisonment for debt extremely rare, except in case of fraud. If it be thought desirable to abolish imprisonment altogether as regards indebted ryots, I see no objection.

The amount of debt which should entitle a ryot to the benefit of the insolvency law should, I think, be at least R50. For that amount and upwards the insolvency principle may be well applied; but not for petty amounts below R50.

I would insist that every instrument to which a ryot puts his hand should be written by a Village Registrar, who would register the same under the supervision of the Registration Department.

I have considered whether it would be practicable to declare the ryots in a particular district, or part of a district, as generally insolvent, and to treat them and their landed tenures in a manner similar to that adopted by several existing laws regarding encumbered estates and indebted zamindars in certain parts of India. My opinion is decidedly adverse to any such declaration being made respecting ryots. They are a large general class very different from the limited and special classes to whom the several Encumbered Estates Acts have been applied. Such a declaration and the proceedings consequent thereon would lead to grave complications and serious embarassments, affecting probably the collection of the land revenue, and encouraging claims being made on Government to advance money for paying off the debts of ryots. The indebted ryots are not confined to any one locality, but are scattered all over the Deccan. It would be impracticable in the first place, and it would be in the second place impolitic, even if it were practicable, for any Government to undertake to deal with the debts of a whole peasantry.

I have thus endeavoured to touch upon all the points mentioned in the despatch of the Secretary of State, namely, the augmentation of the Civil Courts of the interior, the formation of Courts of Conciliation, the establishment of village tribunals, the extension of summary jurisdiction without appeal, the exclusion of professional pleaders in some classes of cases. I trust that our draft Bill herewith to be submitted will be found to duly embody all these points.

In these and all other points relating to this subject, both I and my Colleagues in the Government have had the advantage of conferring with Mr. T. C. Hope, whose assistance and advice were commended to us by the Government of India by their despatch of the 26th February. The opinions of Mr. Hope as an eminent member of the Civil Service of this Presidency and as on officer of much experience will always receive our best consideration. We have formed our own opinions after conferring with him. The Bill has been prepared in consultation with him on the basis of the principles set forth in the foregoing paragraphs of this Minute. It embodies all that I and my Colleagues are able to propose. We trust that it has the concurrence of Mr. Hope. And we beg to submit it for the favourable consideration of the Government of India with a view to their introducing it into the Legislature if they see fit.

The executive proposals regarding increase of establishment, as apart from the legislative proposals, have been considered by myself and my Colleagues in Council, and we are prepared to make the necessary financial provision.

RICHARD TEMPLE.

DRAFT.

No. 45.

A Bill for the relief of Indebted Agriculturists in certain parts of the Presidency of Bombay.

Whereas it is expedient to relieve the agricultural classes in certain parts of the Presidency of Bombay from indebtedness; It is enacted as follows:

PART 1.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Bombay Agriculturists' Relief Act, 1879."

Extent and commencement.

It extends only to the districts of Poona, Satara, Sholapur and Ahmednagar and shall come into force in those districts on the day of 18 ;

but it shall be lawful for the Local Government, with the previous sanction of the Governor General in Council, from time to time, by Notification in the *Bombay Government Gazette*, to extend all or any of its provisions to any other local area within the said Presidency.

Definitions.

2. In this Act, unless there be something repugnant in the subject or context:

"Agriculturist."

(1) the word "agriculturist" means a person who earns his livelihood wholly or principally by agriculture;

"Money."

(2) the word "money" includes grain and any other agricultural produce.

Repeal of Bombay Regulation V of 1827, Section 9, Clause 1.

3. Clause (1) of section 9 of Bombay Regulation V of 1827 is repealed so far as regards any suit to which Section 33 of this Act applies.

PART II.

Of the Civil Courts.

Subordinate Judges to exercise the jurisdiction of Courts of Small Causes in certain cases.

4. Subordinate Judges of the first and second classes shall exercise within the limits of their ordinary local jurisdiction, the jurisdiction of a Court of Small Causes for the trial of—

(*a*) suits cognizable by such Courts up to the amounts of five hundred and one hundred rupees respectively; and

(*b*) suits between mortgagors and mortgagees for the foreclosure or redemption of mortgages, or for the possession or profits of the land mortgaged, where the mortgagor is an agriculturist, and the value or amount of the claim does not exceed five hundred or one hundred rupees, respectively; and

(*c*) suits by agriculturists for an account as hereinafter defined without limit as to value or amount

Distribution of business between a Court of Small Causes and a Subordinate Judge having co-ordinate Jurisdiction.

If the territorial limits of any Court of Small Causes established under Act XI of 1865 shall be co-incident, or partly co-incident with the local limits of the jurisdiction of the court of a Subordinate Judge, the District Judge to whom the said courts are subordinate, may from time to time make such orders as he shall deem fit for regulating the cognizance of the suits in which the said courts have co-ordinate jurisdiction.

Appointment of Village Munsifs.

5. The Local Government may from time to time—

(*a*) appoint any person to be a Village Munsif, and

(*b*) cancel any such appointment.

Extent of jurisdiction.

Every Village Munsif so appointed shall be subordinate to the District Judge and, subject to his general control, shall take cognizance of suits for money lent, or advanced to, or paid for the person sued, or due on an account stated, or on a written or unwritten engagement to pay up to the amount of ten rupees within such local limits as shall from time to time be determined by the Local Government.

District Judge may sit with one or more Subordinate Judges as a Bench for trial of any case.

6. The District Judge may stay the proceedings in any suit or other matter pending before any court subordinate to him, and sit together with the Judge of the said Court, or with the Judge of the said court and the Judge of any other court subordinate to him, as a bench for the disposal of the same. If the members of such bench differ in opinion, the opinion of the District Judge shall prevail.

Assistant or Subordinate Judge may be appointed to inspect subordinate Courts.

7. The Local Government may appoint any Assistant or Subordinate Judge to inspect and supervise, subject to the orders of the District Judge, every Court subordinate to such Judge, and every Conciliation Judge's Court within the local limits of such Judge's jurisdiction.

One such Assistant or Subordinate Judge may be appointed for two or more districts, if the Local Government thinks fit.

Any Assistant or Subordinate Judge so appointed may, if the District Judge so directs, exercise the powers of a District Judge under Section 6 of this Act, or under Section 25 of the Code of Civil Procedure.

PART III.

Of Procedure.

Subordinate Judges.

Suits to be commenced by a plaint. Bombay Act III, 1876, section 5. C. P. C., Sections 48 and 50.

8. Every suit instituted in the Court of a Subordinate Judge under Section 4 of this Act, shall be commenced by presenting a plaint to the Court, or to the Clerk of the Court, if any have been appointed. The plaint shall contain the following particulars :

(*a*) the name, religion, caste, profession, and place of abode of the plaintiff and the defendant ;

(*b*) a plain and concise statement of the circumstances constituting the cause of action, and when and where it arose ;

(*c*) the amount or other relief claimed, or the nature and situation of the property of which, or of the profits of which possession is sought, as the case may be ;

(*d*) a list of the documents and of the witnesses, if any, the plaintiff wishes to adduce, and whether the witnesses are to be summoned to attend, or will be produced at the time and place appointed for the hearing.

Amendment of plaint. Bombay Act III, 1876, Section 8.

9. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contains particulars other than those specified, or if the statement of particulars be unnecessarily prolix, or if the amount or value of the claim be undervalued, or the stamp insufficient, the Court shall, at its discretion, order the necessary amendment to be made then and there, or within three days from the date of such order.

Plaint to be subscribed, verified and endorsed. Bombay Act III, 1876, Sections 6 and 7.

10. When the plaint is in due form, the Subordinate Judge shall require the plaintiff to subscribe and verify it in his presence in open Court in the manner following, or to the like effect :

"I, A. B., the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

The Subordinate Judge shall endorse the plaint to the effect that it was duly subscribed and verified in his presence.

If the plaintiff cannot write, the verification may be written for him in open court, and the Subordinate Judge shall in such case record that the verification was made in his presence, at the request of the plaintiff who affixed his mark to his name in token of the authenticity of the verification.

Rejection of the plaint. Bombay Act III, 1876, Section 9. C. P. C. Sections 53—55.

11. The Subordinate Judge shall reject the plaint if it appear upon the face of it, or after questioning the plaintiff, or on summary enquiry as the case may be, that—

(*a*) no cause of action is disclosed ;

(*b*) the subject of the plaint is not within the jurisdiction of the Court.

(*c*) the suit is barred by any positive rule of law.

The reason of rejection shall be written on the plaint by the Subordinate Judge with his own hand.

Procedure on admission of plaint. Bombay Act III, 1876, Section 11.

12. If the Subordinate Judge admit the plaint, he shall receive and register it, and shall appoint a convenient day and place for the trial and final disposal of the case. The day to be fixed shall not be earlier, except by consent of both parties, than ten days, nor except for unavoidable reasons later than fifteen days from the day when notice of such appointment issues.

Notice shall be given verbally to the plaintiff to appear with his documents and witnesses on the day and at the place appointed.

A summons shall at the same time be issued to the defendant.

Attendance of witness. Bombay Act III, 1876, Section 12.

13. If either party require his witnesses to be summoned to appear on the day and at the place appointed, the Subordinate Judge shall issue summonses for that purpose.

Effect of default of plaintiff. Bombay Act III, 1876, Section 13.

14. If the plaintiff fails to attend with his documents, or omits to adopt measures to procure the attendance of his witnesses on the day and at the place appointed, and fails to satisfy the Court either on such day or within fifteen days afterwards, that he was prevented from so doing by some unavoidable circumstance, the Court shall reject the plaint, and may award to the defendant such compensation as it thinks fit for any expense and loss of time he may have suffered. Such rejection shall bar a fresh suit.

No suit to be decided *ex-parte*. C. P. C., Section 103.

15. No suit shall be heard or determined *ex-parte*.

C. P. C., Section 174.

If the defendant fails to attend, the Court shall adjourn the hearing and take steps to secure his attendance by the issue (*a*) of a fresh summons, or (*b*) of an order that he be arrested and brought before the Court.

Upon the defendant's appearance the case shall proceed.

Hearing of the case. Bombay Act III, 1874, Sections 14 and 15.

16. Upon the day originally appointed, or any day to which the case may be adjourned as aforesaid, the Court shall proceed to fix such issues as it may deem proper, to hear the evidence and to pass judgment and issue its decree.

The proceedings may be, from time to time, adjourned for sufficient reason.

Record of evidence. Madras Regulation V., 1816, Section 4, clause 10.

17. In cases in which the matter at issue is of smaller amount or value than ten rupees it shall be discretionary with the Court to take the depositions of the witnesses in writing or not.

C. P. C., Section 189.

In cases in which the matter at issue is of the amount or value of ten rupees or upwards, it shall not be necessary to take down the evidence of the witnesses in writing at length; but where the evidence is not so taken, the Subordinate Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Subordinate Judge with his own hand, and shall form part of the record.

Written statements. Act XI, 1865, Section 18.

18. No written statement other than the plaint shall be received unless required by the Court, or with its permission.

Judgment. C. P. C., Section 198.

19. After the evidence has been taken, and the parties have been heard, the Subordinate Judge shall pronounce judgment in open court either at once or on some early future day.

C. P. C., Section 203.

In any case in which the evidence of the witnesses has been recorded in writing at length, or in substance by a memorandum made by the Subordinate Judge, the judgment need not contain more than the points for determination and the decision thereupon.

Act IV, 1877, Section 126, and Crim. P. C., Section 228.

In other cases, the judgment shall also contain the substance of the evidence, with a concise statement of the case and of the reasons for the decision.

20. The chapters and sections of the Code of Civil Procedure hereinafter mentioned extend (so far as they are applicable and not inconsistent with this Act) to Subordinate Judges exercising jurisdiction under Section 4 or Part V of this Act, that is to say,—

Partial application of Code of Civil Procedure.

C. P. C., Section 5.

Preliminary. Sections 1, 2 and 3.

Chapter I.—Of the jurisdiction of the Courts and *res judicata*, except Section 11.

" II.—Of the Place of Suing, except Section 20, paragraph 4, and Sections 22 to 24 (both inclusive).

" III.—Of parties, and their Appearances, Applications and Acts.

" IV.—Of the Frame of the Suit.

" V.—Of the Institution of Suits. Sections 49, 59 and 60 to 63 (both inclusive).

" VI.—Of the Issue and Service of Summons, except Sections 64 to 71 (both inclusive).

" VIII.—Of Written Statements and Set off, Section 111, Section 112, paragraph 2, Sections 113 to 116 (both inclusive).

" IX.—Of the Examination of the Parties by the Court.

" X.—Of Discovery and the Admission, etc., of Documents.

" XIV.—Of the Summoning and Attendance of Witnesses. Sections 163 to 167 (both inclusive), Section 168 substituting in the last paragraph "Subordinate Judge" for "Court of Small Causes" to 173 (both inclusive), Section 174 except the explanation, Sections 175 to 178 (both inclusive).

" XV.—Of the Hearing of the Suit, etc., Sections 179, 180, 181, 186, 187, 188, 190 to 193 (both inclusive).

" XVII.—Of Judgment and Decree. Sections 199 to 202 (both inclusive), 205 to 212 (both inclusive), 216 and 217.

" XVIII.—Of Costs. Sections 220, 221, and 222.

" XIX.—Of the Execution of Decrees. Sections 230 to 258 (both inclusive), Section 259 (except so far as it relates to the recovery of wives), 263, 264, 266 to 335 (both inclusive).

" XXI.—Of the Death, Marriage, and Insolvency of Parties.

" XXII.—Of the Withdrawal and Adjustment of suits.

" XXIII.—Of Payment into Courts.

" XXIV.—Of requiring Security for Costs.

" XXV.—Of Commissions.

" XXVI.—Suits by Paupers.

" XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of Section 433.

" XXIX.—Suits by and against Corporations and Companies.

" XXX.—Suits by and against Trustees, Executors and Administrators.

" XXXI.—Suits by and against Minors and Persons of unsound mind.

" XXXII.—Suits by and against Military men.

" XXXIII.—Interpleader.

" XXXIV.—Of Arrest and Attachment before judgment. Sections 483 to 490 (both inclusive) and Section 491 (so far as relates to attachments).

" XXXV.—Of Temporary Injunctions, etc. Sections 492 and 494 to 497 (both inclusive).

" XXXVII.—Reference to arbitration.

" XLVII.—Of Review of Judgment.

" XLIX.—Miscellaneous. Sections 640, 641, 642, 643, 645, 647, 648 (so far as relates to attachments) and 651.

Except as is in this Act otherwise specially provided, the provisions of the said Code or of any other enactment now in force for regulating the procedure of civil courts, shall not apply to the proceedings of Subordinate Judges under the said section or part of this Act.

Village Munsifs.

21. Every suit before a Village Munsif shall be instituted by presenting a plaint to such Munsif, signed or attested by the mark of the plaintiff, and containing the particulars prescribed in Section 8 of this Act.

Suits before Village Munsifs to be commenced by a plaint.

22. Upon receipt of any such plaint, the Village Munsif shall, by verbal summons through the village officers, or in such other manner as he deems fit, require the defendant to appear before him in person within two days or such longer period as he shall deem reasonable.

Procedure on receipt of plaint.

Mad. Reg. IV, of 1816, Sec. 12.

The Village Munsif may from time to time extend the period for the defendant's appearance if the defendant is absent from the local limits of his jurisdiction, or for any other sufficient reason.

If the defendant fails without reasonable cause to attend, the Village Munsif may adjourn the hearing and secure his attendance either by the issue of a written summons, or by an order that he be arrested and brought before him.

Notice shall be given verbally, or, if in any rule made under Section 85, the Local Government shall so direct, in writing, to the plaintiff to appear on the day appointed for the defendant's appearance.

Plaint to be explained to the defendant.

23. Upon the day originally fixed, or any day to which the case may be adjourned as aforesaid, the Village Munsif shall explain the nature of the plaint to the defendant in the presence of the plaintiff.

If defendant objects to the claim, inquiry to be held.

Mad. Reg. IV., 1816, Sec. 14.

24. If the defendant shall object to the claim, the Village Munsif shall proceed, either immediately or on some other day as soon after as the business before him will permit, to inquire into the truth of the claim and of the defendant's objection thereto respectively.

Decision may in certain cases be given without examination of witnesses.

If the parties are willing to dispense with the examination of witnesses, the Village Munsif shall give his decision on consideration of the statements of the parties and of any documents which they may produce for his perusal, or if either party shall consent in writing to let the case be settled by the evidence of the other on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which such other party belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Village Munsif may, if he thinks fit, tender such oath or affirmation to such other party, and if he agrees in writing to make the same, shall give his decision in accordance with the evidence which the said party shall give on such oath or affirmation.

Examination of witnesses.

Mad. Reg. V., 1816, Sec. 4, cl. 10.

25. The Village Munsif shall receive such evidence as may be tendered by the parties, and for this purpose shall have power to summon any person residing within the local limits of his jurisdiction or within a distance of ten miles from the place where he holds his court, to give evidence or to produce any document in his possession or power. The depositions of the witnesses may be taken in writing or not, as the Village Munsif shall in each case think fit.

Punishment of recusant witnesses.

Mad. Reg. IV., 1816, Sec. 15, cl. 6.

Any witness duly summoned by the Village Munsif who shall refuse to attend, or attending shall refuse to answer, and any witness or party refusing to produce any document required may be fined by the Village Munsif a sum not exceeding one rupee, or may, at the instance of such Village Munsif, be proceeded against by a Subordinate Judge under Section 174 of the Code of Civil Procedure.

Mad. Regulation IV., 1816, section 25.

Any fine inflicted by a Village Munsif under this section may be recovered by the Collector under the law for the time being in force for the recovery of arrears of land revenue.

Contents of decree.
C. P. C., sections 205 and 206.

26. When the parties have been heard, and the evidence, if any, on both sides taken and considered, the Village Munsif shall pass his decree, which shall be written and signed by himself, and shall bear date the day on which it is passed, and shall contain the number of the suit and the names of the parties; and shall specify clearly the amount awarded, or other determination of the suit.

Execution of Village Munsif's decrees.
Madras Regulation IV., 1816, Section 23.

27. In every such decree the Village Munsif shall also specify such period, not exceeding six months, as he shall deem fit to allow for the satisfaction of the same by the parties amongst themselves.

If at any time within one month after the expiry of the period so fixed, the judgment-creditor shall prove to the satisfaction of the Village Munsif that the decree has not been satisfied, or has not been fully satisfied, the Village Munsif shall forward a certified copy of

the said decree to the Court of the Subordinate Judge having jurisdiction in the place where the judgment-debtor resides, together with a certificate setting forth the extent, if any, to which satisfaction of the said decree has been obtained.

The Court to which a decree is so sent shall deal with it as it would deal with a decree sent to it for execution under Section 224 of the Code of Civil Procedure.

Record.

28. Every Village Munsif shall keep a register in which he shall from time to time enter with his own hand the names of the parties in every case which comes before him, the dates of all their appearances, the names of the witnesses examined for either party, and, when their depositions are not taken in writing, the substance of their evidence, and a concise statement of the points at issue, and of the reasons for the decision.

General Provisions.

Court of first instance to determine, when necessary, whether party is an agriculturist.

29. Whenever under any provision of this Act, the jurisdistion or procedure of a court or the nature of its decision depends upon and party to a suit or application being an agriculturist, it shall be the duty of the court in which such suit or application is brought to ascertain and determine whether such party is an agriculturist.

Bombay Bill I, section 3.

The decision of any court of first instance that a party is an agriculturist shall be final.

No appeal in cases tried under this Act.
Act XI, 1865, section 21.

30. No appeal shall lie from any decision or order of a Village Munsif or Subordinate Judge or of a District Judge, or Assistant Judge in exercise of any jurisdiction conferred by this Act.

Reference of questions.
C. P. C., section 617.

31. If before or on the hearing of any suit or other matter by any such Munsif or Judge any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, arises on which the Court entertains reasonable doubt, the Court may draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement, with its own opinion on the point, for the decision of the District Judge, or, if the District Judge, be dealing with the case, of the High Court. Pending the receipt of a decision upon such reference, the proceedings shall be stayed.

Of revision.
Crim. P. C., section 295.

32. The District Judge may call for and examine the record of any suit or other matter tried under this Act for the purpose of satisfying himself of the legality or propriety of any decree or order passed, and as to the regularity of the proceedings, and may pass such order thereon as he thinks fit.

The Assistant or Subordinate Judge appointed under Section 7 may similarly call for and examine the record of any such case, and if he see cause therefor, may refer the same with his remarks, for the orders of the District Judge :

Provided that no decision or order shall be reversed or altered for any error or defect, or otherwise unless a failure of justice shall be deemed to have taken place :

Bombay Bill I, section 3.

Provided also that nothing herein contained shall authorize the reversal of the decision of any courtof first instance that any person is or is not, an agriculturist.

PART IV.

Of Suits and other Proceedings to which Agriculturists are Parties.

Actual amount of money lent, etc., to be ascertained when the debtor is an agriculturist.
Bombay Bill I, sections 3 and 4.

33. If in any suit brought for the recovery of money alleged to be payable on account of money lent or advanced to, or paid for the defendant, or on an account stated, or on a written or unwritten engagement, or for the redemption or foreclosure of a mortgage, or for the possession or profits of mortgaged land, the defendant, or any one of the defendants, not being a surety merely of the actual debtor, or the mortgagor, or any one of the mortgagors, as the case may be, is an agriculturist, the Court shall ascertain the actual amount of money lent

advanced, paid or due. For this purpose the Court shall, irrespectively of the provisions of the Indian Evidence Act,—

(*a*) inquire into the origin of the debt, and the nature of each subsequent transactions, if any, in respect thereof;

(*b*) if any written acknowledgment of debt is relied on by the plaintiff, ascertain whether the whole of the amount therein named was advanced to the debtor.

The Court shall further enquire into the history and merits of the case, with the view of ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise.

If not ascertainable, may be fixed equitably. Bombay Bill I, section 5.

34. If in any such suit a doubt arises as to the actual nature and extent of the transactions between the parties, the following shall be relevant facts, that is to say—

(*a*) the means and position of the lender at the time the debt was incurred;

(*b*) the means and position of the borrower at such time;

(*c*) the state of the borrower's credit at such time, and the prospect at such time of his repaying a loan of the alleged amount;

(*d*) the circumstances under which the money was borrowed; and

(*e*) the requirements of a person in the borrower's station of life under such circumstances.

Reference to arbitration in certa in cases. Bombay Bill I, section 6.

35. The Court may of its own motion, and if both parties so desire, shall refer the question of the sum to be allowed on account of the principal of the debt to arbitration.

When any such reference is made by desire of the parties, nomination of the arbitrators shall be made in accordance with Section 507 of the Code of Civil Procedure. When the reference is made of its own motion by the Court, it shall appoint three arbitrators, who shall be residents of the same village, town or city in which the debtor and creditor reside, if they both reside in the same village, town or city, and if, in the opinion of the Court, fit and proper persons can be thus obtained.

The provisions of Sections 508 to 521 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

Reasonable interest to be allowed. Bombay Bill II, section 4.

36. The interest, if any, to be awarded upon any sum ascertained to have been actually lent or awarded as aforesaid, shall be—

(*a*) the rate, if any, agreed upon between the parties, unless such rate be deemed by the Court to be unreasonable; or

(*b*) if such rate be deemed by the Court unreasonable, or if no rate was agreed upon, such rate as the Court deems reasonable:

Provided always that—

but payments, etc., already made to be deducted;

(*a*) all payments already made by or on behalf of the debtor to the creditor, and all profits of any kind whatever enjoyed or realized by the creditor in satisfaction of the debt shall be brought to account, and credited, as far as they go, in cancelment first of the interest, if any, due at the rate allowed by the Court at the time or times at which such payments were made or such profits enjoyed or realized, and next in reduction of the principa lamount of the debt;

and interest not to be allowed if agreement so provides;

(*b*) if the agreement between the parties expressly so provides, no interest shall be allowed;

and comp ound interest not to be allowed;

(*c*) compound interest shall not, in any case be allowed;

and aggregate amount of interest not to exceed the principal;

(*d*) the amount of interest received or to be received by the creditor shall not in any case exceed, in the aggregate, the amount of the principal debt;

and in the case of ancestral debts interest not to be disallowed or limited.

(*e*) if the debt, or any portion thereof, was not contracted by the person from whom the creditor seeks to obtain recovery, but by such person's father or other ancestor, the said person shall be called upon to state whether he is willing to accept the full responsibility for such debt, or for such portion thereof; and if he accepts such responsibility, shall be held liable for the full amount payable on account of such debt or of such portion thereof, subject to the other provisions of this Act, or of any law for the time being in force relating to liability for ancestral debts; but if he declines to accept such responsibility, shall be held liable only for the principal amount of such debt, or of such portion thereof, with interest up to the date of the death of the person who incurred such debt or such portion thereof, if such person was related to him in the first degree; and otherwise only for the principal amount of such debt or of such portion thereof.

Agriculturist debtors may sue for accounts and settlement of amount of their debts.
Bom. Bill I, Section 8.

37. It shall be competent to any agriculturist at any time to sue for an account of monies respectively lent or advanced to or paid for him by a creditor and paid by him to such creditor, and for a decree determinative of the amount, if any, still payable by him to such creditor.

Amount of debts in such cases to be determined according to foregoing provisions.

When any such suit is brought, the amount payable by the plaintiff shall be determined under the same rules as would be applicable, if the creditor had himself sued for recovery of the debt; and the provisions of Chapter XXIII of the Code of Civil Procedure relating to payment into Court shall be applicable as if the plaintiff were a defendant in a suit to recover the debt, and the defendant the plaintiff in such suit.

Decree may provide for payment by instalments.

In any decree passed under this section, the Court may order that the amount due shall be paid by instalments, with or without interest.

Execution of decrees under this section.

The plaintiff may pay the amount of the decree, or the amount of each instalment fixed by the decree as it falls due into Court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

Part payment and discharge.

38. At any time after a decree has been passed under which any money is recoverable from an agriculturist, the Court may, whether in the course of execution of the said decree or otherwise—

(*a*) direct the payment of a portion of the amount decreed, and after satisfying itself as to the means of the debtor and other claims upon him, if any, and of his inability to pay the balance, grant him a discharge from such balance; or

(*b*) if the debtor's liabilities amount to R50 direct proceedings to be taken with respect to him as if he had applied to be declared an insolvent under Part V of this Act.

Payments by instalments.
C. P. C., Section 210.

39. The Court may, at any time, direct that the amount of any such decree or such portion of the same as aforesaid, shall be paid by instalments with or without interest.

The Court may, when such instalments do not extend over a period longer than seven years, direct that they shall be recovered by the Collector as a revenue demand and paid to the decree-holder.

Arrest and imprisonment for debt abolished.

40. Except as provided in Section 60 of this Act, no agriculturist shall be arrested or imprisoned on account of debt.

Land exempted from attachment and sale unless specifically pledged.
Bombay Bill I, Section 9.

41. No agriculturist's land shall be attached or sold in execution of any decree or orde unless it has been specifically pledged as security for the repayment of the debt to which such decree or order relates, and the mortgage lien still subsists.

Ancestral debt.
Bombay Bill II, Section 5.

42. If, upon application being made for the execution of a decree for the payment of money against an agriculturist, it appears that the person against whom execution is sought is not the person made liable by the decree for the amount thereof, but the heir of such person, the amount recoverable under the decree shall be determined by the Court in accordance with the provisions of clause (*e*) of section 36 of this Act.

PART V.

OF INSOLVENCY.

Chapter XX of the Civil Procedure Code not to apply to agriculturists.

43. Nothing in Chapter XX of the Code of Civil Procedure shall apply to any judgment-debtor who is an agriculturist.

Power to apply to be declared an insolvent. Bombay Bill I, Section 11.

44. Any agriculturist who is in debt and whose debts amount to ₨50 or upwards, and any creditor who claims a sum of not less than ₨50 from any agriculturist, and any two or more creditors who claim an aggregate sum of not less than the said amount from any agriculturist, may apply in writing to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place in which such agriculturist resides, to declare such agriculturist an insolvent.

Every such application shall be subscribed in the manner prescribed in Section 10.

Contents of application by debtor. Bombay Bill I, Section 12.

45. If such application is made by the debtor. it shall set forth—

(*a*) the amount and particulars of all pecuniary claims against him ;

(*b*) the names and residences of his creditors, so far as they are known to, or can be ascertained by him ;

(*c*) the amount, kind and particulars of his property, and the value of any such property not consisting of money ;

(*d*) the place or places in which such property is to be found ; and

(*e*) his willingness to put at the disposal of the Court all such portion thereof as is by law liable for debt.

Contents of application by creditor. Bombay Bill I, Section 13.

46. If such application is made by a creditor or creditors it shall set forth—

(*a*) the name and residence of the alleged debtor :

(*b*) the amount and particulars of his or their claims against the alleged debtor ;

(*c*) the name and residence of any other person to whom the alleged debtor is believed to be indebted ; and

(*d*) the grounds on which it is sought to have the alleged debtor declared an insolvent.

Notice to issue on debtor's application. Bombay Bill I, Section 16.

47. When the application is made by the debtor, the Court shall cause a copy thereof, together with a notice of the time and place at which it will be heard, to be stuck up in court, and to be served on each creditor named therein.

Creditor's application how to be dealt with. Bombay Bill I, Sections 14 and 15.

48. If upon perusal of an application made by a creditor or creditors, and after such examination of the applicant, or of any of the applicants, as the Court thinks fit, the Court deems that there is not sufficient *primâ facie* reason to believe that the alleged debtor is in insolvent circumstances, it may reject the application.

If the Court deems that there is such reason, it shall fix a day for the alleged debtor to produce a statement, verified in the manner prescribed in Section 10 of this Act, setting forth he particulars specified in clauses (*a*), (*b*), (*c*), and (*d*) of Section 45, and to show cause why he should not be declared an insolvent, and shall cause a copy of the application, with a notice in writing or the time and place at which such cause is to be shewn, to be served on the said debtor.

General invitation to other claimants. Bombay Bill I, Section 17.

49. In the case contemplated by Section 45 or by Section 46, the Court may, by proclamation or otherwise, as it thinks fit, publicly invite the appearance on the day fixed of all persons having claims against the debtor.

Attachment in certain cases. Bombay Bill I, Section 18.

50. If, at any time after an application has been made, the Court is satisfied that the debtor has already removed, concealed, or destroyed or is about to remove, conceal or destroy any books, papers or property, with the intent to avoid examination in respect of his affairs or otherwise to delay or embarrass the

insolvency proceedings, the Court may, by warrant, cause any books, papers, or property in the possession of such debtor to be attached and to be safely kept so long as the Court directs.

Procedure at first hearing.
Bombay Bill I, Section 19.

51. On the day fixed for hearing the application, the Court shall examine the alleged debtor, in the presence of such of the creditors as appear, as to his circumstances and present or future means of payment, and shall hear any creditors opposing the application.

Declaration of insolvency.
Bombay Bill I, Section 20.

52. If the Court is satisfied that the debtor's liabilities amount to ₨50 or upwards and that he is in insolvent circumstances, it shall declare him to be an insolvent.

Inquiry into debts and assets.
Bombay Bill I, Section 22.
C. P. C., Section 352.

53. Upon such declaration of insolvency, the Court shall proceed, upon such day as it may fix, to hear such evidence as the alleged creditors may produce regarding the amount and particulars of their respective claims, and any reply and evidence which the insolvent may offer in opposition thereto, and to ascertain the available assets of the insolvent.

The Court shall determine, in accordance with Sections 33 to 36 (both inclusive), the amount of the insolvent's several debts, and shall frame a schedule specifying such debts, the names of the persons to whom they are due, and the order in which they are payable and also the available assets of the insolvent.

A copy of such schedule shall be stuck up in the court-house.

Amendment of schedule.
Bombay Bill I, Section 23.
C. P. C., Section 353.

54. Any person claiming to be a creditor of the insolvent who has not appeared during the previous proceedings may, within one month from the publication of the schedule, apply to the Court for the amendment of the schedule by the insertion of his name and claim therein. If the Court is satisfied that he was prevented by unavoidable causes from previously appearing, it shall hear any evidence the applicant may produce and the defence of the insolvent, and then comply with or reject the application.

Any creditor mentioned in the schedule may, within one month from the publication thereof, apply to the Court for an order altering the schedule so far as regards the amount, nature, particulars or precedence of his own debt or that of another creditor, or striking out the name of another creditor. The Court after hearing the insolvent and any other creditors concerned shall comply with or reject the application.

Any creditor mentioned in the schedule may, within one month from the publication thereof, apply to the Court for the addition to the schedule of any available assets mentioned therein, and the Court, after hearing the applicant and the insolvent and any other parties concerned, shall comply with or reject the application. The Court may, at any time, of its own motion, or on the application of the insolvent, so amend the schedule.

Fraudulent transfers.
Bombay Bill I, Section 20, cl. (*d*).

55. The Court may, at any time, annul any transfer of the insolvent's property, or of any part thereof, which shall be shown to have been made by the insolvent with intent to defraud his creditors or to give an unfair preference to any of them, and may direct that the property so transferred shall be entered in the schedule as available assets and dealt with accordingly.

Liquidation of debts.
Bombay Bill I, Section 26.

56. Upon the final settlement of the schedule of debts and assets the Court shall proceed—

(*a*) to pay debts, fines, and penalties (if any) due by the insolvent to Government;

(*b*) to pay such costs of the insolvency proceedings as may be due under any rule made by the Local Government under Section 85 of this Act;

(*c*) to distribute the balance of available assets among the scheduled creditors rateably according to the amounts of their respective debts, or according to any order or preference fixed in the schedule.

Conversion of moveable property into money.

57. In order to make the payments specified in Section 56, the Court may convert into money such portion of the available moveable property other than money as it thinks fit.

58. In order to make the distribution required by clause (c) of the said Section, the Court may, in its discretion, assign specific properties at such respective valuations as it deems equitable, to individual creditors, in lieu of converting the same into money.

Specific properties may be assigned to particular creditors;

The Court may likewise direct payment to be made by the insolvent by instalments out of the annual proceeds of specific properties, in lieu of so assigning or converting the same.

or their annual proceeds devoted to payment of insolvent's liabilities.

59. If the debts cannot be fully liquidated in manner hereinbefore provided, the Court may—

Powers of Court if assets insufficient.

(a) direct that the balance be paid by the insolvent by instalments out of the annual proceeds of his immoveable property; or

(b) direct that a portion of such balance be so paid and grant the insolvent an absolute discharge as to the remainder; or

(c) grant the insolvent an absolute discharge as to the whole of such balance.

60. Any instalment fixed under Section 58 or 59 shall, if the Court so direct, be levied and paid to the creditor by the Collector, and may be recovered as a revenue demand.

Recovery of instalments.

Until such instalments have been paid—

(a) the property shall not be transferable by the insolvent or his heir; and

(b) the insolvent or his heirs shall not receive a final discharge with respect to any balance of such instalments;

(c) the insolvent or his heirs shall be liable to be arrested and imprisoned in the civil jail for a term which may extend to one year, in the event of their fraudulently neglecting or refusing to cultivate or let for hire or cultivation, as the case may be, any or all of the said property:

Provided that the insolvent or his heirs may at any time pay up the full amount of any instalments due, and shall thereupon receive a final discharge.

61. If at any time previous to the grant of a final discharge, it is shown to the satisfaction of the Court that in the course of the insolvency proceedings—

Procedure in cases of fraud
Bombay Bill I., Section 21.
C. P. C., Section 359.

(a) the debtor has wilfully made any false statement as to the debts due by him, or as to the property belonging to him, whether in possession or expectancy or held for him in trust, or has fraudulently concealed or removed any property; or

(b) a creditor has wilfully made any false statement as to the amount, particulars or precedence of his claim, whether such statement affect the debtor or other creditors; or

(c) either debtor or creditor has concealed any fact material to the issue, or committed any other act of bad faith regarding the matter in issue;

the Court may send the offender to a Magistrate to be dealt with according to law.

PART VI.

Of Conciliation Judges.

Appointment of Conciliation Judges.

62. The Local Government may from time to time—

(a) appoint any person to be a Conciliation Judge, and

(b) cancel any such appointment.

Every Conciliation Judge so appointed shall exercise his functions under this Act, at such place and in respect of matters affecting agriculturists residing within such local limits as the Local Government shall from time to time determine.

63. When any dispute arises between two parties one of whom is an agriculturist as to any matter within the cognizance of a Civil Court (1) either party may apply to the Conciliation Judge having jurisdiction in the place where the said agriculturist resides, or (2) both parties may jointly so apply.

Disputes may be brought before Conciliation Judges.

64. If the application be made by one of the parties only, the Conciliation Judge shall take down, or cause to be taken down in writing, a general statement of the applicant's contention, and shall thereupon by summons, or by such other means as he deems fit, invite the person against whom such application is made to attend before him upon a day to be fixed for this purpose, on which day he shall direct the applicant to be also present.

Procedure thereupon.

If the said person fails to appear on the day first fixed, the Conciliation Judge may, if he thinks fit, from time to time extend the period for his appearance.

Day for attendance may be from time to time postponed.

65. Whenever both parties are present, the Conciliation Judge shall call upon each in turn to explain his contention regarding the matter in dispute and shall use his best endeavours to induce them to settle the matter amicably or to submit it to arbitration.

When both parties appear, Conciliation Judge to endeavour to reconcile them.

66. The Conciliation Judge shall hear the statement of any witness and peruse any book of account or other document produced by the parties; and if any party or witness shall consent in writing to affirm any statement upon oath or solemn affirmation in any form not repugnant to justice or decency and not purporting to affect any third person, shall arrange for such oath or solemn affirmation being duly taken in the presence of both parties.

Conciliation Judge to hear statements of witnesses, etc.

67. If on the day on which the case is first heard by the Conciliation Judge, or on any subsequent day to which he may adjourn the hearing, both parties shall agree to terms for the settlement of the matter in dispute, the said terms shall be forthwith embodied in a decision, or in an agreement for reference to arbitration, or in a *razináma*, as the case may require, which shall be read and explained to the parties and shall be signed or attested by the marks of the Conciliation Judge and of the parties, or their representatives respectively.

Procedure on conclusion.

68. When a decision has been so framed and signed or attested, the Conciliation Judge shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides.

Decision duly signed or attested to be forwarded to Civil Court, and

The Court which receives the decision shall order it to be filed, and it shall then take effect as if it were a decree of the said court passed on the day on which it is ordered to be filed and from which no appeal lies.

to be filed in the Civil Court and given effect to as a decree.

69. If the person against whom any application is made before a Conciliation Judge cannot be found, or if he refuses or neglects, after such period as the Conciliation Judge thinks reasonable shall have been allowed for his appearance, to appear before the Conciliation Judge, or if he appears, but the attempt to reconcile the parties or to induce them to resort to arbitration fails, the Conciliation Judge shall on demand give to the applicant, or, in the case of a joint application, to either applicant, a certificate under his signature to that effect.

Certificate to be given to applicant if conciliation fails.

No suit shall be entertained in any Civil Court in respect of any matter which ought under the foregoing provisions to have been brought before a Conciliation Judge, unless the plaintiff first produces a certificate as aforesaid.

Suit not to be entertained by Civil Court unless such certificate is produced.

PART VII.

OF LEGAL PRACTITIONERS.

70. No legal practitioners shall be permitted to appear on behalf of any party to a case before a Village Munsif or a Conciliation Judge or in any case cognizable by a Subordinate Judge under Section 4 of this Act, in which the value or amount of the claim does not exceed one hundred rupees:

Legal practitioners to be excluded.

Provided that—

(*a*) any party to any such case may be permitted on reasonable cause being shown to the satisfaction of the Conciliation Judge, Munsif of Sub-Judge to employ any relative, servant

or dependant, who is not, and has not previously been a legal practitioner or a law agent, to appear either conjointly with or in lieu of such party;

(*b*) a Subordinate Judge may admit a legal practitioner to appear for any party in any such case as aforesaid in which for special reasons, which he shall record at the time in writing he deems it desirable that the party should have such assistance;

Appointment of counsel for debtor in certain cases.

(*c*) in any case in which a creditor is permitted under the last preceding clause to appoint Counsel to appear on his behalf, and the Subordinate Judge is of opinion that the debtor is not in such pecuniary circumstances as to admit of his obtaining similar Counsel, the Subordinate Judge may, with the consent of the debtor, direct the Government Pleader, or other competent person, to undertake his defence.

If in the case provided for in clause (*a*) of this section a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a *mukhtyarnama* defining the extent to which he is empowered to act.

PART VIII.

Registration by Village Registrars.

Appointment of Village Registrars.

71. The Local Government may appoint such persons as it thinks proper, whether public officers or not, to be Village Registrars.

Each such person shall be Village Registrar for such local area as the Local Government shall prescribe.

The Local Government may appoint any person by name or in virtue of his office to exercise all or any of the powers conferred on it by this section.

Instruments to which agriculturist is a party not to be deemed valid unless executed before a Village Registrar.

72. No instrument executed after the passing of this Act, to which an agriculturist residing in any place in which this Act is in force is a party, shall be received in any Court of Justice, or by any person having by law or consent of parties authority to receive evidence, as creating, modifying, transferring, or extinguishing or purporting to create, modify, transfer or extinguish any right or obligation;

or as evidence in any civil proceeding;

or shall be acted upon in any such Court, or by any such person as aforesaid, or by any public officer,

unless such instrument is written by, or under the superintendence of, and is attested by, a Village Registrar.

Such instruments to be written by or under the superintendence of a Village Registrar and executed in his presence.

73. When any persons, one or more of whom is an agriculturist, desire to execute any instrument, they shall present themselves before the Village Registrar appointed by the local Government for the area in which the said agriculturist or any one of the said agriculturists resides, who after satisfying himself in such manner as he deems fit as to the identity of the parties, and receiving from them the prescribed fee and the stamp, if any, which may be necessary, shall write the instrument, or cause the same to be written under his superintendence, and require the parties to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall be attested by the Village Registrar, and also, if any of the parties thereto is unable to read and write, by two respectable witnesses.

Registration of instruments by Village Registrars.

74. Every Village Registrar shall keep a register of instruments executed before him in such form as shall from time to time be prescribed by the Inspector General of Registration under Section 77 of this Act.

As soon as any instrument has been completely executed before a Village Registrar, he shall make, or cause a copy of it to be made, in his register. He shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties, it there be more than one.

Previous to delivery the original instrument and each such copy shall be endorsed under the Village Registrar's signature with the date of registration, the name and residence of the Village Registrar, and the volume and page of the Register in which the instrument has been registered.

Consideration to be fully stated in every instrument executed before a Village Registrar.

75. In every instrument written by or under the superintendence of the Village Registrar, the amount and nature of the consideration shall be fully stated.

The Village Registrar shall also endorse the instrument with a note, under his signature recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

If the instrument is to be executed in supersession, or partly in supersession of a previous instrument, such instrument shall be produced before the Village Registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village Registrar under his signature for identification.

Registration under this Act to be deemed equivalent to registration under the Indian Registration Act, 1877.

76. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village Registrar but has been otherwise executed, shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

Village Registrars to be subordinate to the Inspector General of Registration.

77. The Inspector General appointed under the said Act shall exercise, by himself and through his subordinates, a general superintendence over all Village Registrars and shall have power from time to time to make rules consistent with this Act for regulating their proceedings and for providing for the custody of their records.

Penalty if person not being a Village Registrar writes any instrument.

78. Any person who, not being a Village Registrar, writes otherwise than by direction and under the superintendence of a Village Registrar, any instrument which this Act requires to be executed before a Village Registrar, shall be punished for each such offence, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Mortgages, etc., to be valid only when written and registered.

Government of India's Bill, Section 4.

79. No mortgage, lien or charge of or upon any land belonging to an agriculturist shall be valid unless it is created by an instrument in writing signed by the person creating such mortgage, lien or charge.

Exemption of instruments to which Government or any officer of Government is a party.

80. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party to be executed before a Village Registrar.

PART VIII.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

Agriculturists to be entitled to written receipts,

81. Every agriculturist who makes any payment of money in liquidation of debt shall be entitled to receive at the time of such payment a written receipt from the person to whom such payment is made.

If such payment is made under any instrument written, under Section 73 of this Act, by a Village Registrar, the said receipt shall, if the agriculturist so require, be endorsed on the copy of the said instrument furnished to him under Section 74 of this Act.

and to own annual statement of account.

82. Any agriculturist by whom any money is due under any instrument shall be entitled to receive from the person claiming under such instrument, within one month after the date on which by local custom annual accounts are balanced, a statement of his account up to that date.

The Local Government may, by notification in the *Bombay Government Gazette*, declare what date shall in any district or portion of a district be taken to be the date on which annual accounts are balanced for the purpose of this section.

And to have his account made up from time to time in a pass-book.

83. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book, and to require from time to time that his account up to date be written therein and attested by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money lender shall be deemed to be equivalent to the grant of a receipt for the amount so entered.

Penalty for contravention of Sections 81—83.

84. Any person who, in contravention of Sections 81, 82 or 83 of this Act, refuses or neglects to give a receipt, or a statement of account, or a pass-book, or to write, or cause to be written any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

PART IX.

MISCELLANEOUS.

Local Government to frame rules.

85. The Local Government may from time to time make rules consistent with this Act—

(*a*) regulating the proceedings of Village Munsifs and Conciliation Judges in matters not provided for by this Act;

(*b*) fixing the charges to be made by Conciliation Judges for anything done by them under this Act;

(*c*) determining what record and accounts shall be kept by Conciliation Judges, and what returns shall be framed and furnished by them;

(*d*) regulating the appointment, suspension, dismissal, duties, and remuneration of Village Registrars, and prescribing the fees to be levied by them;

(*e*) generally for carrying out the provisions of this Act.

All such rules shall be published in the *Bombay Government Gazette*, and shall thereupon have the force of law.

No. 46. From J. B. PEILE, Esq., Acting Chief Secretary to the Government of Bombay, to the Secretary to the Government of India,—No. 2248, dated Bombay Castle, the 28th April 1879.

In continuation of my letter No. 2056, dated 18th instant, I am directed to transmit, for submission to the Government of India, the accompanying copy of a Minute written by the Honourable Mr. Gibbs, C.S.I., while Member of this Government, on the letter of the Government of India, No. 222, dated 26th February last, and the despatch from the Secretary of State for India, No. 4, dated 26th December 1878, relating to the proposed measures for the relief of indebted ryots in certain parts of the Bombay Presidency.

2. This Minute is submitted in accordance with the desire expressed by the Honourable Mr. Gibbs.

No. 47. Minute by the Honourable J. GIBBS, C.S.I., on Government of India's letter No. 222, dated 26th February 1879, and Secretary of State's despatch No. 4, dated the 26th December 1878.

I do not wish to keep these papers, and, as I am about to vacate my seat in Council, I would willingly have made them over to my successor; but after a judicial experience of 30 years, I think I should not be justified in letting the matter pass without a few observations.

2. I would beg to refer to my Minutes of the following dates:—

14th November 1877,
29th ditto,
26th December 1877,

and my Note on Sir E. Perry's scheme (which is now incorporated in the Secretary of State's despatch No. 4 of 26th December 1878), dated 11th June 1878, and which His Excellency the President has, I find, placed on record.

3. I would also beg to refer to my evidence given before the Famine Commission on the 25th February last, a copy of which will be appended to this.

4. I cannot find in the letters under notice any reference to Act XVI of 1869 (Bombay Civil Courts Act), or to the fact that under Section 28 of it Government may invest *any* subordinate Judge of the 2nd class with Small Cause Court powers up to ₨50, and any 1st class subordinate Judge with the like powers up to ₨500, and that all decisions coming under these powers are final.

5. I cannot, therefore, understand what the Government of India mean in their 14th paragraph in stating that to invest all Judges with final jurisdiction in petty cases "points, which very considerable change in the procedure of the Civil Courts." Such is the law in Bombay now, and the majority of the subordinate Judges have been invested with Small Cause Court powers.

6. Neither can I understand the Secretary of State's speaking in paragraph 32 about the difficulties which intervene to prevent the entrusting of large summary powers to subordinate Judges when they have by law such powers up to 50 rupees, and in some cases to 500 rupees, and have exercised them satisfactorily.

7. Then, again, as to paragraph 33, in which allusion is made to the old practice of the Supreme Court, and the suggestion that the District Judge might devote one day in the week to the disposal of small cases up to, say, 500 rupees, I cannot understand such recommendation, when in every head quarter station there is either a Small Cause Court (as in Puna, Ahmedabad and Surat), or the first class subordinate Judge with Small Cause Court powers up to ₨500, sitting *daily* trying such suits, and with finality in the decision, as there is no appeal.

8. It would seem to me that this provision of the law as regards this Presidency has been strangely overlooked.

9. Then as to the multiplication of courts, I speak only from recollection, but I doubt if the seats of the subordinate Judges' Courts, as a rule, ever exceed 30 miles from the furthest village of their territorial jurisdiction, and such a distance as this is not very great for the ordinary ryot, suitor or defendant, to whom a walk of 20 miles is of a common occurrence.

10. My impression is that we do not want more courts. I think if we had more we should not do the ryots any benefit; the fact is that they are so ignorant and have been for so long completely in the hands of the sowkars that when a suit is filed by them they purposely keep away from court as they know they cannot, as a rule, show any proof as to the amount sued for being incorrect. Even if present and examined, they would in most cases merely say they had passed the bond for so much, but how that sum was arrived at they did not know, as they trusted to the sowkars.

11. I believe myself, from my judicial experience, that in former days, when the limitation for money suits was twelve years, that the sowkar and ryot did not settle accounts until towards the close of that period, and then a new bond was passed in the place of the old one, and generally for double the amount; while since the limitation has been reduced to six and now three years, such adjustments, and with much the same result as to the proportionate increase, have had to be made oftener, and so the ryot's debt has increased more rapidly. To take an example: say a bond for ₨20 passed 1st July 1850, in 1862 it would have had to be renewed for 40 rupees under the old law; while now between twelve years, say between 1860 and 1872, it would have had to be renewed four times, aud finally for 320 rupees instead of 40 rupees.

12. Then as to a multiplication of small village 'courts, the difficulty would be to get men fit to preside. If Government even got men sufficiently able, they would hardly secure honesty, as the salary which could be given would not be more than 100 rupees a month.

13. It depends a great deal on what Government may be prepared to do, if they are prepared to advance money to clear off the ryot's debts in accordance with the plan proposed in the correspondence which took place in 1874, with a copy of which I furnished the Famine Commission; then we might exempt them altogether from the Civil Courts, appoint Commissioners to settle their claims, and when once a *tabula rasa* is effected, provision might be made to secure the holdings against alienation beyond the holder's life-time,—to provide for all contracts between ryots and sowkars being executed before a Government officer, whose duty it should be to see that the ryot understands the account transactions and requiring all in which immoveable property is concerned, no matter how small the amount, to be registered.

14. The great point will be not to break down the security of the ryot so low that the sowkar will not advance him money, for that would be tantamount to destroying the former, who is, and for many years will be, dependent on the latter. Any regulation must leave a

fair margin of pledgable security, or we shall be "killing the goose that lays the golden egg."

15. I strongly advise this Government to refrain from increasing the courts as a panacea for the ailment prevailing in the Deccan, far better take the ryots out of the jurisdiction of the courts that at present exist, and treat their debts by Commissioners, with power to advance the means of clearing off the debts. If this can be done at from 25 to 50 per cent., and the holding be taken as a security by Government, it will be a radical cure for present difficulties, and leave Government unfettered as to its protective legislation for the future.

J. GIBBS.

The 17th March 1879.

P. S.—I would wish to correct an error into which my Honourable Colleague has fallen in his 22nd paragraph. The Pleaders of the present day are a very different class of men to those who existed in Mountstuart Elphinstone's time. No one now can become a Pleader without passing a most severe examination before a Judge of the High Court, a Barrister, two Pleaders and the Registrar of the Court, and he is not admitted even to this examination until he has produced certificates of good character, which are strictly scrutinized.

I agree with some portion of Mr. Ashburner's Minute, but I miss any practical remedy, save if I understand him rightly, the appointment of Commissioners to dispose of the claims (paragraphs 12 and 13). He mentions the hope Government has to avoid the abuses which have led to the present state of things, and his confidence that there is no need to anticipate any difficulty, if Government may protect the ryots from fraud, and provide prompt and simple process for the recovery of *bonâ fide* debts to the sowkar, but I do not see that he proposes any definite plan for doing all this.

But with regard to his last paragraph, I would certainly recommend that, whether their claims are left to the courts on not, the place of one of the Judges of the High Court going yearly on tour of inspection should be regularly provided for; no Judge has gone on such duty since 1869, and the courts require careful examination.

I wish this Minute and its appendices to be sent to the Government of India and Secretary of State as an expression of my own individual opinion.

No. 48. *Papers alluded to in the above Minute.*

Minute by the Honourable J. Gibbs, C.S.I., dated the 14th November 1877.

I am not aware whether His Excellency has seen the confidential letters and Minutes written in October 1875, on the manner in which the proposed recommendations of the Ryots' Commission could be best carried out, because he would then see that the difficulties it was feared would be so great that it was proposed to pay off debts, as a preliminary step to making special laws and provision for the Deccan ryots for the future.

As regards the three points put forward by His Excellency, I have no objection to No. 1 and No. 2, but I think very great difficulties will arise in setlling the bills. I shall, however, be happy to do what I can to aid Mr. Naylor in the work.

I may add that as regards the first point, the practical result will, I fear, be not what His Excellency expects. The sowkars will at once make up a set of books for the courts (as the Marwaris do in Bombay) and the ignorance of the ryot debtor is such that the court will be as helpless as it is now.

As regards the third point, I regret I cannot concur. I think that as all agreements between sowkars and ryots which have been entered into up to the present date have been made on the firm assurance that the land was viewed as a final security, that any proposal to render the land unattachable, except for future agreements would be an interference between debtor and creditor, which even the circumstances of the Deccan ryots would not justify.

J. GIBBS.

No 49. Minute by the Honourable J. Gibbs, C.S.I., dated 29th November 1877.

I think I have been slightly misunderstood by my Honourable Colleague.

In the 15th paragraph of His Excellency's Minute he writes—"Thirdly, a ryot 'ryotwari' land (revenue paying land) ought not, I think, to be sold for debt unless it has been specifically pledged by him in a bond registered before a rural registrar or notary." On

may now perhaps give them more fully. What I object to is that as in all agreements made between ryots and sowkars up to now, although the bonds may not contain a mention of any immoveable property mortgaged, yet for the last 20 years or more, under such agreement the attachment and sale of the land was a known remedy, and has often been had recourse to, I do not think we can with justice forbid the sale of land under such existing agreements.

I have no objection in the least to forbid the attachment and sale of land in *future cases*, and to provide for a more extensive system of registration, etc., but what I do object to is, interfering between debtor and creditor, as regards existing engagements.

His Excellency states in his "note" of the 25th, how he would reply to me; but I venture to think, considering in three out of the four districts, the first 30 years of the survey and settlement has in some parts expired, and a fresh period of 30 years has commenced, and in all the rest the first 30 years has nearly come to an end, or quite so (I except Satara of course), that the people have had full time to know that land is a security, and the sowkars to have viewed it as such and fixed their rates accordingly.

I worked the Insolvent Act for five or six years in Bombay, and, in fact, the present procedure in the Insolvent Court at the Presidency was settled and worked out under me, and I know the difficulties which must arise in extending such a law to the mofussil, while I also know, from a judicial experience since 1865 in the Deccan and in the High Court, that all attempts to find out whether a debt claimed is partly the debtor's father's, partly his grandfather's and partly his own, or how much is due to each, will prove almost an impossibility in the working; but, as I said before, I object to neither No. 1 nor No. 2 of His Excellency's proposals, nor to No 3, except as relates to existing agreements, and I will do my best to assist in the proposed legislation as regards the portion I have mentioned.

J. GIBBS.

Minute by the Honourable J. GIBBS, C.S.I., dated the 26th December 1877. No. 50.

I have carefully re-considered the 3rd proposal of His Excellency the President, and have also discussed the subject with my Honourable Colleague, Mr. Ashburner. My objection to declare by law that no land is saleable for debt, as far as regards simple contracts entered into between ryots and sowkars, before the present time, is that I firmly believe, and the earlier records of the survey will bear me out, that one, if not the principal, benefit set out before the ryot from the survey was that his land became a valuable asset with which he could deal, and that in consequence there was, from the first introduction of the survey, an implied contract not only between Government and the ryot, but also the sowkar, that the land of the second-named was a security for advances made by the last-mentioned.

I have, however, no objection to legislation by which for *the future* land shall not be transferable by decree of the court, unless it was specially mortgaged, and the mortgage formed the subject of the suit, and, further, that all deeds affecting land or other immoveable property shall be registered, although the amount involved be below 100 rupees.

I would even go further and consent to a ryot's holding not being alienable beyond the holder's life-time, but I cannot concur in a proposal which would prevent holders of lands losing the right to attach the land, which when the document was executed, was undoubtedly at their disposal. I further think that the new Civil Procedure Code, added to the severe lesson the sowkars have received two years ago, will be sufficient as regards past transactions. For the future, as above-stated, I would legislate.

If, however, a project of law based on the opinion of His Excellency the President and my Honourable Colleague be sanctioned for introduction into the Legislative Council, I shall not oppose it, although with my present views I could not support it by argument.

J. GIBBS.

Sir E. PERRY's Notes: Deccan Riots of 1875. No. 51.

Sir Erskine considers it clear, from the Deccan riots' report, that two points are established, *viz.*—

(1) The power of the sowkars over the ryots is increasing to a most disastrous extent.

(2) This increase of power in creditors in inducing fraud, extortion, and oppression is distinctly attributable to our own institutions.

In older days the ryot, when screwed by the farmer or zemindar, put it down to "zoolum"* and took it as "nasib"†; now it is the direct action of Government through the creditor—

(a) The class of money-lenders has increased in number, no longer the village sowkar, but rapacious Marwaris.

(b) Land was not formerly saleable, now it is, from 5 to 47 years' purchase: the ryot's credit is increased, and so are his borrowings.

(c) The Native Government gave no direct help to creditors, no prison, no sheriff, a creditor did what he could by "durna,"‡ or in rare cases by "traga,"‖ but the natural good relations between debtor and creditor tempered the action of both.

All the difficulty may be traced to the moderate assessment on the land and the establishment of courts of justice.

The Deccan Riots Commission recommended as remedies—

(1) Abolition of imprisonment for debt.

(2) A general insolvency act.

(3) Immunity from seizure in execution of implements of trade or husbandry.

(4) Restriction on sale of land and, in some cases, its total immunity for judgment-debts.

(5) Adoption of old law of limitation.

(6) Localization of Small Cause Court.

Sir E. Perry approves warmly of (1), (2), and (3); thinks (4) and (5) might be carried out, but his want of local knowledge prevents his giving a strong opinion.

But (6) is his great point.

[*Note.*—By recent legislation, (1) partly, (2) partly, (3) wholly, and (4) partly have been authorized; (2) and (4) still further to be carried out—is proposed by Bombay Government draft Bill.)

In arguing for No. (6), Sir E. Perry in nine paragraphs makes certain statements which I do not think are correct. I will note my views on each paragraph.

Paragraph (1).—I never heard any Judges avow that "they have not time under the present system to dispose efficiently of cases when the defendant is a poor man" and I sincerely trust no such idea ever entered the mind of any Subordinate Judge; if it did, I should doubt his being fit for his appointment.

That the money-lender has advantages over his debtor I do not doubt; the possession of money and greater intelligence alone account for this; but it is not owing to any fault of the Judge, or indeed of the system of our courts; it is just the natural consequence of the state of things which exists in the country.

Paragraphs (2), (3), (4). I think Sir E. Perry is not aware of the present system of our Courts. Small Cause Court powers up to 50 rupees are grantable to every Subordinate Judge, and to those of the 1st class similar powers up to 500 rupees, while a District Judge at the head-quarter station could not do much in the way of trying simple suits and imitating Cicero even if he had time, which he has not: while, unless the people were made to travel great distances, he would only have the cases of the town he resided in and a few villages round. But this is, in fact, provided for to a great extent by the Small Cause Courts or the Court of the 1st Class Subordinate Judge, who, as a rule, resides and holds his Court at the head-quarter station trying all such Small Cause Court suits.

Our Subordinate Judges are now a very different race of men to those Sir E. Perry remembers: they have to pass very severe examinations before they can be admitted on the list of applicants. Examinations conducted by a Judge of the High Court and one or two Barristers, and in English, or otherwise, the candidate must have gone through College and taken B.A. and LL. B. Degrees.

* Tyranny.

† Fate.

‡ Sitting at the debtor's door.

‖ Injuring themselves in some way—spilling blood.

Sir E. Perry must also be thinking of the halcyon days of the Supreme Court when there were only two Judges, and they had seldom to sit, save in term time, and then, as a rule, not more than from 12 to 3 o'clock, which gave them plenty of leisure and long vacations, while now three or four Judges sit on the Original Side five days out of the six from 11 to 5 daily ! While the Judges and Subordinate Judges up-country find their present work often takes them from early morning until late at night. Many Subordinate Judges are at work from 9 to 6 or 7 o'clock daily.

Paragraph (5) (6). Sir E. Perry admits his proposition of giving patels civil powers, and having a sort of *juge de paix* for each taluka would involve complete reorganization, but thinks it would not greatly increase the expenditure. I venture to think it would be costly, for as it would not enable Government to do away with the Subordinate Judges it would be an additional expense.

Paragraph(7). "The principal Civil Courts," if by this is meant the Judge's Court, sits at the Zila or head-quarter station,but the Courts of "first instance," in which 40 to 90 per cent. of all the cases are tried and finally disposed of, are spread all over the district.

Paragraph (8). The Subordinate Judge's proceeding on circuit has been tried in Sind, but I understood it was not found to answer. Mr. Justice Melvill so informed me. But in one or two places we have Subordinate Judges sitting at certain times at two different towns in their jurisdiction, and this answers pretty well. I do not think the Hindu Subordinate Judges would mind moving about any more than Hindu Mamlatdars do.

In his further note Sir E. Perry seems to forget that a walk of 30 miles is not thought much of by a ryot. Many walk that for some very trivial end.

Punchayets, I am glad to see, Sir E. Perry does not recommend. Besides Sir G. Wingate's experience of the delay which arises in their settlement of the case, there is the greater difficulty of getting good and honest men who would not be partizans.

These are the main observations I have to offer on Sir E. Perry's notes.

J. GIBBS.

NOTES OF EVIDENCE TAKEN BY FAMINE COMMISSION. No. 52.

Note by the Honourable J. GIBBS, C.S.I., Member of Council, dated Bombay, the 25th February 1879.

Referring to the prospects of our irrigational works, the present main difficulty is to get the people to take the water. This arises chiefly from the ignorance of the people; but the readiness to take it is increasing, as the last returns show. This is shown mainly on the Mutha Canal, because no other canal is so advanced as that, and so able to distribute a constant supply. When people once find that the water is beneficial they will, I think, take it. In Satara, I am told, there is a great desire on the part of the better class of landowners to get irrigation. I very much doubt if there is sufficient experience as yet to show that water is only useful to manured and not unmanured soil. It may be the case with deep black soil, but there is little of that soil in the Deccan. I cannot say it would pay them to grow rice, but they will grow the better class of crops to a greater extent if they find it profitable; and they may also grow better crops of ordinary dry grain when they get a certain supply of water. Mr. Moore told me that if perennal irrigation could be given in some parts of the Satara district the people would gladly pay R15 to R20, instead of one rupee as now, on dry crop land.

As to the "protection" rate, this Government and also (I understand) the Government of India are in favour of it, as applicable to all the commanded area; but I know there is a considerable opposition to this view at home, and the rate will have to be strongly justified. The Bill is now before a Select Committee, and the Irrigation Department has sent up a memorandum on it. As a Member of this Government I have had to consider the point, and I have arrived at a conclusion that such a rate is justifiable, and, further, that it is the only way in which Government can undertake such works.

As to the suggestion that when the water of the Ekruk Canal in Sholapur was rolling uselessly away in 1876-77, compulsory measures should have been taken to force the cultivators to use the water, I see no objection on principle to such compulsion. I think that the people, whom we are obliged to feed if they are starving, should not be allowed freedom

of action in this respect. But I do not see how it could have been done, except by imposing a compulsory rate. The idea was never discussed whether Government could have employed the famine relief labour in cultivating the land and using canal water, where land was left vacant by the population emigrating; but I see no objection in principle to doing such a thing, though I doubt it paying.

The system of suspension of revenue is (as I remarked in my Minute of December 29th, 1877) a new thing in this Presidency; but I still think that it worked well, and I believe the majority of the revenue officers hold this opinion. Nothing has since come to my knowledge to alter that view. But I would not make the collection of revenue more elastic than it now, is, or apply the principle of suspension to ordinary years of deficient produce or partial loss. Our rule is that the assessment being founded on an average between good years and bad should be payable in all years, except those of exceptional calamity.

A comparison between the statistics of assessment of our territories and Native States has led me to the conclusion, not only that our assessment is low, but that it is so low as perhaps to affect injuriously the industry and enterprise of the cultivators, leading them to a careless style of cultivation; whereas, if the assessment were heavier, they would try to take more out of the soil than they do now. Dividing the soil of the Deccan into three classes, I think the cultivation of the first class, and the greater part of the second, is so slovenly that the soil does not return what it ought. In the lower class of soil the outturn is so small that careless cultivation is perhaps natural. A revenue officer who had been engaged on a boundary case between the Sangli estate and the Satara boundary told me that he had been struck by seeing land on the Sangli side highly cultivated, while exactly similar land on the Satara side was poorly cultivated. The assessment was found to be (I think) R1-8 in Sangli against annas 10 in Satara.

I think the proposal to spread the total revenue over a cycle of years, and to collect larger or smaller instalments according to the crop, would be an unfortunate measure. It would make the ryot still more improvident by creating a greater uncertainty in his mind as to what Government will take. I had rather than this go back to the old Batai system of payment in kind, though I am not prepared to advocate that, except perhaps in some exceptionally poor districts. The ryots' indebtedness is not due to the assessment, nor even in any large degree to the civil courts, but to their ignorance, their readiness to borrow, their incapacity to test the accounts, their willingness to sign any bond. In 1867-68 an enquiry was made by me, when a Judge of the High Court in three districts—Nagar, Thana, and Khandesh: 80 per cent. of the suits were money suits for sums under R50, and about 75 per cent. of these were decided *ex-parte*, or by compromise. If you had Small Cause Courts in every small circle of villages, the ryots would still refuse to go to them, they would still stop away, saying—"I owe the sowkar the money and he keeps the accounts, and what is the use of my going to Court? I have no accounts to show, and the Court must give a decree against me."

Sir R. Temple's proposals (in his Minute on the Deccan ryots) were three—

1st.—That the court should go behind the bond and investigate the accounts.

2nd.—That every ryot should have power to apply for the Insolvent Act.

3rd.—That no land should be sold unless it was specifically mortgaged and the decree passed on the bond.

I had no objection to 1st and 2nd, though I ventured to think that they would be of little or no use: as to 1st the sowkars will keep a separate set of books to be produced in court, as the Marwaris do in the Bombay Small Cause Court; while as to 2nd, from my experience of the working of the Insolvent Act in Bombay, where for five years I presided in the Insolvent Court, I thought it would be extremely difficult to apply any such system in the country. But as to 3rd I objected because one of the grounds urged for the introduction of the settlement was to give the ryot an absolute property in the land, and it was understood that his land would be liable for his debts. If once the debts are paid off, or if the land is free, such a law may be passed; but where he is embarrassed, the rule would have a retrospective effect, which would be unfair. I would agree to such a rule for the future, wherever you establish a *tabula rasa* (regarding a means for establishing which I beg to put in a copy of some correspondence and some Minutes written in 1875), and would even agree that it should be declared that henceforth land should not be transferable at all.

I would not like to say that the sowkar and ryot difficulty is working itself out. I still think there is need for special legislation. I would extend the law of compulsory registration

to all immoveable property, no matter of how small an amount. I would also approve a system under which all agreements between ryots and sowkars should be entered into before a Government officer, who would act as a Notary Public, and in duplicate, so that the ryots should have a copy, and the Notary Public should be responsible for seeing that the ryot understood the terms of the agreement. I also advocate the extension of the limitation period to twelve years, the old law, but I would not interfere as to the rate of interest charged. The present limitation, which compels a settlement of accounts every three years, is entirely in favour of the sowkar and is ruin to the ryot, as the amount gets doubled on every occasion—now every three years, then only every twelve. I think a village punchayet is a very good thing if you can get good people to sit on it; but that is the difficulty, and an almost insurmountable one. Sooner than increase the number of courts, I should prefer the late General John Jacob's plan of having no courts at all. I know from experience that so long as there were no civil courts in the Upper Sind Frontier Districts, there was plenty and prosperity and the sowkars and people both throve. After the civil courts were established, a different state of things came into existence, and the people are now, I hear, nearly ruined, and the blame is laid on the civil courts!

With regard to relief measures, the main improvement I wish to suggest is the Legislature giving compulsory powers to restrain wanderers and to enforce relief. We need this at the present moment in Bombay, to enable us to deport people who have come from Kattiawar attracted here by promiscuous charity, although the Chiefs in Kattiawar have started works to employ them. But I refer chiefly to the state of the Deccan, where there are traditional habits of migration. These are to be found chiefly among agricultural labourers, of various castes, who have no tie to the land: also some migratory tribes like gipsies. I want an Act which will enable any Magistrate to send people found wandering about with no means of subsistence to a relief centre, and having restored their strength there, to send them on to a relief work and keep them there. This would be quite possible; and if we had had that power during the late famine, we should have had much less mortality, as it was chiefly these people who died.

I also would have only two kinds of relief: large works for those who can work, and gratuitous relief in villages for those who cannot. I would not advocate moving these people, the sick and infirm, from their villages into relief camps if the village officers can look after them, but we must have relief camps for the wanderers. I would, however, have no small village works; if a man can dig at all, I should say he must go to a regular relief work. The village relief should be from house to house under the care of village officers, and be confined to those too ill or too old to work, or to those who must be left to take care of the sick and infirm.

I should shrink from legalising flogging: imprisonment would be sufficient. Those who are sent to a work by a Magistrate would be looked after at night as if they were jail prisoners on an extra-mural work. I think that, as a matter of fact, the absence of such a law did prevent officers from sending people to relief camps, etc., when they thought that otherwise it would be right to do so. My Act would enable any Magistrate to deal summarily with any destitute person found wandering. I do not think this would cause a panic or make the relief system unpopular. It was done in Poona, but there the Collector and famine officers had the Governor and Members of Council personally to back them and take the responsibility; but in outside places, and where such strong backing up was not at hand, the absence of an Act legalizing such a course prevented officers doing what they knew was best.

The 25th February 1879. C. A. E.

From the Honourable T. C. HOPE, C.S.I., to C. BERNARD, Esq., C.S.I., Officiating Secretary to the Government of India,—dated Simla, the 26th April 1879. **No. 53.**

I beg to inform you that, under the instructions conveyed in your letter No. 223, dated February 26th, I left Calcutta on the 29th ultimo, and after staying eight days in Bombay reached Simla on the 13th instant.

2. Before leaving Calcutta, I drafted a Bill for the relief of the Deccan Ryots, and revised it carefully in consultation with the Secretary to the Government of India in the Legislative Department (Mr. Fitzpatrick), to whose skill and counsel I am much indebted. I also prepared a note explanatory of the Bill.

3. I append copies of the Bill and note,* as also of communications received demi-officially from the Honourable D. Carmichael, Member of Council at Madras, and Mr. Fitzpatrick, which contain valuable information relating to the Madras Village Munsif and the French Conciliation systems.

* 15 copies.

4. On reaching Bombay, and laying my draft and note unofficially before the Government, I learned that on the receipt of the telegram from Mr. Bernard of March 21st, it had been decided to adopt the alternative course, therein allowed, of making, after my visit to Bombay, a separate representation to the Government of India, and that the Legal Remembrancer had already made the rough draft of a Bill accordingly.

5. Upon the basis of this draft by the Legal Remembrancer and of my draft and note a third draft Bill was framed during my stay in Bombay, in full consultation with me, which has been forwarded direct to the Government of India with the letter of the Chief Secretary, No. 2056 of the 18th instant. This draft contains numerous provisions which I have already advocated or heartily agree with, and, reserving otherwise my private opinions, it has my general concurrence and support.

6. Under the altered circumstances thus arising out of the telegrams of the 20th and 21st ultimo, I presume that it is no longer necessary for me to submit, as required in the instructions of February 26th, a memorandum "descriptive of the Bill, of the authorities you may have consulted, and of the extent to which the Government of Bombay may be prepared to accept your Bill." I am engaged, however, in recasting my original note into a form explaining fully the new Bombay Bill and quoting all the arguments and authorities on which its various provisions rest. This paper, which will be forwarded in a few days, will, I trust, be of use in the consideration of the Bill by the Executive Council, which I presume will now take place.

No. 54. *A Bill for the Relief of Indebted Agriculturists in certain parts of the Presidency of Bombay.*

India Bill, I.

Preamble. Whereas it is expedient to relieve and protect indebted agriculturists in certain parts of the Presidency of Bombay; It is hereby enacted as follows:

PRELIMINARY.

Short title. This Act may be called the "Deccan Ryot's Relief Act, 1879."

Local extent. Commencement. It shall extend only to the Districts of Poona, Satara, Sholapur and Ahmednagar; and shall come into force on the day of 1879.

Bombay Bill I, s. 1. The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the official Gazette, extend the whole or any part of this Act to any other local area administered by the Governor of Bombay in Council.

Definitions. 2. In this Act (1) "ryot" means a person who earns his livelihood wholly or principally by agriculture; and

(2) the word "money" includes grain, unless there is something repugnant in the subject or context.

Enactments repealed. 3. The enactments specified in the first Schedule hereto annexed are hereby repealed to the extent mentioned in the third column of the same Schedule.

PART I.

OF RYOT'S COURT.

CHAPTER I.—*Of the Constitution and Control of Ryot's Courts.*

Act IV, 1887, s. 8.

Establishment of Ryot's Courts. 4. The Local Government shall, for the purposes of this Act, constitute, within the said district, so many divisions as it thinks fit, and may from time to time alter the number of such divisions and their respective extents.

5. For each such division the Local Government shall establish a Ryot's Court, and appoint one or more persons (hereinafter called Ryot's Court Judges) to be Judges of the said Court, and may suspend or remove any person so appointed. Act IV, 1877, s.

The Local Government may from time to time appoint any Subordinate Judge of the first or second class to be a Ryot's Court Judge in any division, and may cancel such appointment. Act XIV, 1869, s.

Places where Courts to be held.

6. Each Ryot's Court Judge shall ordinarily hold his Court at a suitable place to be appointed by the Local Government as his head quarters, but shall from time to time throughout the fair season, and may at other seasons, subject to the control of the District Judge, proceed on circuit and hold his Court elsewhere, as may be convenient, within the limits of his division: Act XIV, 1895, s. Act XI, 1865, s.

Provided that any Ryot's Court Judge who has been specially empowered under section 16 may receive plaints and issue summons at any place where he exercises civil jurisdiction of any description.

7. The District Judge, and every Joint Judge and Assistant Judge, shall when within any division be a Judge of the Ryot's Court of such division:

8. The District Judge may depute any Judge of a Ryot's Court within his district to another division for the purpose of assisting in the disposal of matters cognizable by a Ryot's Court in such division. Act XIV, 1869, s.

Control of District Judge.

9. The District Judge shall have general control over all Ryot's Courts and their establishments in the district; and may give such orders as he thinks fit regarding the circuits of the Ryot's Court Judges, the distribution of business in Ryot's Courts, and all matters not provided for by law. Act XIV, 1869, s.

10. The District Judge may —

(*a*) transfer to his own file and as a Ryot's Court Judge dispose personally of any matter pending in any Ryot's Court; and

(*b*) stay the proceedings in any such matter, and sit together with the Ryot's Court Judge in whose Court it is pending, or with the said Judge, and the Judge of any other Ryot's Court appointed in that behalf by the District Judge, as a bench for the disposal of same. If the members of such Bench differ in opinion, the opinion of the District Judge shall prevail. Act XI, 1865, s. 3

Joint Judge.

11. The Local Government may appoint a Joint Judge to exercise, in the place of the District Judge, the functions of a District Judge under this Act. Act XI, 1865, s. 3

Supervision by Assistant Judge.

12. The Local Government shall appoint an Assistant Judge to supervise, subordinate to the District Judge, the Ryot's Courts in the district. Act. XIV, 1869, s

The Assistant Judge so appointed shall go on circuit throughout the district during thn fair season, and may exercise the powers of a District Judge under Section 10.

Functions in more districts than one.

13. A Joint Judge or an Assistant Judge may, if the Local Government so appoint, exercise the functions referred to in Sections 11 and 12 in more districts than one.

Application of Act XIV. of 1869.

14. Except as herein otherwise provided, the provisions of Sections 32, 33, 34, 38 and 39 of Act XIV of 1869, relating to Subordinate Judges and ministerial officers shall apply to the Judges and officers of Ryot's Courts.

CHAPTER II.—*Of the Jurisdiction of Ryot's Courts.*

Matters cognizable.

15. The following matter shall be cognizable by Ryot's Courts, namely,— Act XI, 1865, s. 6.

(*a*) suits for money lent, or advanced to, or paid for the defendant, or due on an account stated, or on a written or unwritten engagement to pay, where the defendant, or one of the defendants not being a surety merely of the actual debtor, is a ryot;

(b) suits by ryots for an account;

(c) suits between mortgagors and mortgagees for the foreclosure or redemption of mortgages, or for the possession or profits of the land mortgaged, where such mortagors are ryots;

(d) applications for execution of decrees in suits of the nature specified in clauses (a), (b), and (c), whether such decrees have been passed before or after the date on which this Act comes into force;

(e) proceedings in insolvency of ryots;

Provided that no Ryot's Court Judge shall exceed his powers.

Powers of Ryot's Court Judges.

16. Any Ryot's Court Judge may take cognizance of the matters specified in Section 15, clauses (a), (c), and (d), when the claim or amount in issue does not exceed one hundred rupees.

Act XIV, 1869, s. 25.

Any Ryot's Court Judge, who has been specially empowered by the Local Government in that behalf, may take cognizance of such matters when the claim or amount in issue exceeds one hundred and does not exceed five hundred rupees. Any such Judge may, if so directed by the District Judge, take cognizance of such matters within the local jurisdiction of other Ryot's Court Judges who have not been so empowered.

Subject to the confirmation of the District Judge or Assistant Judge, or by consent of parties, any Ryot's Court Judge may take cognizance of such matters when the claim or amount in issue does not exceed five hundred rupees, and any Ryot's Court Judge specially empowered as above may take cognizance of such matters when the claim or amount in issue exceeds five hundred rupees.

Any Ryot's Court Judge may, without limit of value, take cognizance of the matters specified in Section 15, clauses (b) and (e).

17. No suit or other matter cognizable by a Ryot's Court Judge shall be heard and determined in any other court.

C. P. C., s. 617.

Reference of questions.

18. If before or on the hearing of any case, any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, arises, on which the Court dealing with the case entertains reasonable doubt, the Court may draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement, with its own opinion on the point, for the decision of the District Judge or, if the District Judge be dealing with the case, of the High Court. Pending the receipt of a decision upon such reference, the proceedings shall be stayed.

Act XI, 1865, s. 21.

No appeal.

19. No appeal shall lie from any decision or order of a Ryot's Court Judge or of the District Judge, Joint Judge, or Assistant Judge in exercise of his jurisdiction under this Act.

Review of judgment.

20. The provisions relating to review of judgment contained in Chapter XLVII of the Civil Procedure Code, shall apply, so far as may be, to decisions or orders passed under this Act.

Act X, 1872, s. 295.

Of revision.

21. The District Judge may call for and examine the record of any case under this Act for the purpose of satisfying himself of the legality or propriety of any decision or order passed and as to the regularity of the proceedings, and may pass such order thereon as he thinks fit.

The Assistant Judge appointed under Section 12 may similarly call for and examine the record of any such case, and if he see cause therefor, may refer the same, with his remarks, for the orders of the District Judge:

Provided that no decision or order shall be reversed or altered for any error or defect, or otherwise unless a failure of justice is deemed to have taken place:

Bombay Bill I, s. 3.

Provided also that the decision of any Ryot's Court that any person is, or is not, a ryot shall be final.

CHAPTER III.—*General Principles.*

Amount of money lent to be ascertained.

22. In any suit under this Act for money alleged to be payable on account of money lent, or advanced to, or paid for the defendant, or due on an account stated, or on a written or unwritten engagement to pay, the Court shall ascertain the actual sum so lent, advanced, paid or due. For this purpose the Court shall— Bombay Bill I,

(*a*) inquire into the origin of the debt, and the nature of each subsequent transaction, if any, in respect thereof;

(*b*) if any written acknowledgment of debt is relied on by the plaintiff, ascertain whether the whole of the amount therein named was advanced to the debtor.

The Court shall further enquire into the history and merits of the case, with the view of ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise.

If not ascertainable, may be fixed equitably.

23. If in any such suit the question arises as to the actual nature and extent of the transactions between the parties, the following shall be relevant facts, that is to say: Bombay Bill I,

(*a*) the means and position of the lender at the time the debt was incurred;

(*b*) the means and position of the borrower at such time;

(*c*) the state of the borrower's credit at such time, and the prospect at such time of his repaying a loan of the alleged amount;

(*d*) the circumstances under which the money was borrowed; and

(*e*) the requirements of a person in the borrower's station of life under such circumstances.

Reference to arbitration.

24. The Court may of its own motion appoint an arbitrator to determine what sum shall be allowed on account of the principal of the debt. Bombay Bill I,

The reference shall be made under the provisions of Chapter VI of this Act.

Reasonable interest to be allowed.

25. The interest, if any, to be allowed upon any sum ascertained to have been actually lent or awarded, as aforesaid, shall be— Bombay Bill II,

(*a*) the rate, if any, agreed upon between the parties, unless such rate be deemed by the Court to be extortionate; or

(*b*) if such rate be so deemed extortionate, or if no rate was agreed upon, such rate (if any) as the Court deems reasonable:

Provided always that

But payments, etc., already made to be deducted.

(*c*) all payments already made by or on behalf of the debtor to the creditor, and all profits of any kind whatever enjoyed or realized by the creditor in satisfaction of the debt, shall be brought to account, and credited, as far as they go in cancelment first of the interest, if any, due at the rate allowed by the Court at the time or times at which such payments were made, or such profits enjoyed or realized, and next in reduction of the principal amount of the debt;

And interest not to be allowed if agreement so provides.

(*d*) if the agreement between the parties expressly so provides, no interest shall be allowed;

And compound interest not to be allowed.

(*e*) compound interest shall not in any case be allowed;

And aggregate amount of interest not to exceed the principal.

(*f*) the amount of interest received, or to be received, by the creditor shall not in any case exceed in the aggregate the amount of the principal debt;

And in the case of ancestral debts, interest to be disallowed or limited.

(*g*) if the debt, or any portion thereof, was not contracted by the person from whom the creditor seeks to obtain recovery, but by such person's father or other ancestor, the said persons shall be called upon to state whether he is willing to accept the full responsibility for

such debt, or for such portion thereof, and if he accepts such responsibility, shall be held liable for the full amount payable on account of such debt or of such portion thereof, subject to the other provisions of this Act, or of any law for the time being in force relating to liability for ancestral debts, but if he declines to accept such responsibility, shall not be held liable for more than the principal amount of such debt or of such portion thereof, with interest up to the date of the death of the person who incurred such debt or such portion thereof, if such person was related to him in the first degree, and otherwise only for the principal amount of such debtor of such portion thereof. Nothing in this clause shall affect any mortgage, lien or charge.

Bombay Bill II, s. 5.

Ancestral debt.

26. If, upon application being made for the execution of a decree for the payment of money, it appears that the person against whom execution is sought is not the person made liable by the decree for the amount thereof, but the heir of such person, the amount recoverable under the decree shall be determined by the Court in accordance with the provisions of clause (*g*) of Section 25.

Bombay Bill I, s. 9.

Land free from attachment and sale unless specifically pledged.

27. No ryot's land shall be attached or sold in execution of any decree or order unless it has been specifically pledged as security for the repayment of the debt to which such decree or order relates, and the mortgage lien still subsists.

India Bill, s. 4.

Mortgages, etc., to be valid only when written and registered.

28. No mortgage, lien or charge of or upon any land belonging to a ryot shall be valid unless it is created by an instrument in writing signed by the person creating such mortgage, lien or charge.

Limitation.

29. Notwithstanding anything contained in the Indian Limitation Act, 1878, the period of limitation in suits for money lent shall be twelve years.

Bombay Bill, I, s. 8.

Suits by ryots for account.

30. A ryot may sue for an account and for a decree determinative of the amount, if any, still payable by him to such creditor; and may deposit in Court such sum of money as, prior to decree, he estimates to be due on such account, or the amount declared by the decree to be due. Sections 377 and 378 of the Code of Civil Procedure shall, *mutatis mutandis*, apply to such deposit.

In any such suit the amount payable by the plaintiff shall be determined under the same rules as would apply if the creditor had sued for the recovery of the debt.

Part payment and discharge.

31. At any time after a decree has been passed the Court may, whether in the course of execution of a decree or otherwise,—

(*a*) direct the payment of a portion of the decree, and after satisfying itself as to the means of the debtor and other claims upon him, if any, and of his inability to pay the balance, may grant him a discharge from such balance; or

(*b*) if the debtor's liabilities amount to rupees fifty, direct proceedings to be taken with respect to him as if he had applied to be declared an insolvent under Chapter VIII.

Bombay Bill I, s. 8.

Payment by instalments.

32. In any suit or application for execution of a decree the Court may direct that the amount of the decree shall be paid by instalments with or without interest.

The Court may, when such instalments do not extend over a period longer than seven years, direct that they shall be recovered by the Collector as a revenue demand and paid to the decree-holder.

Arrest and imprisonment for debt abolished.

33. Except as provided in Section 80 of this Act, no ryot shall be arrested or imprisoned on account of debt.

CHAPTER IV.—*Of Procedure.*

Failure of conciliation an indispensable preliminary.

34. No suit, and no application for execution of a decree made before the date when this Act comes into force, shall be entertained in any Ryot's Court unless the parties have previously appeared before a Rural Justice in accordance with the provisions of Chapter V of this Act, and unless the plaintiff or applicant produces a certificate from such Justice that he has failed to effect conciliation.

35. Every suit under this Act shall be instituted by presenting a plaint in open Court to the Judge, or such officer as he appoints in this behalf. The plaint shall contain the following particulars:

Suits to be commenced by a plaint.

Bombay Act III 1876, s. 5. C. P. C., ss. 48 a 50.

(a) The name, religion, caste, profession, and place of abode of plaintiff and the defendant;

(b) A plain and concise statement of the circumstances constituting the cause of action, and when and where it arose;

(c) The amount or other relief claimed, or the nature and situation of the property of which, or of the profits of which, possession or use is sought, as the case may be;

(d) A list of the documents, if any, and of the witnesses upon which the plaintiff relies, and whether they are to be summoned to attend, or will be produced at the time and place appointed for the hearing.

36. On the presentation of any plaint or application in any Ryot's Court, the Court shall ascertain and determine whether any party alleged therein to be a ryot is a ryot or not. If the Court decide in the negative, it shall return the plaint or application for presentation in the proper Court.

Court to determine whether defendant is a ryot.

Bombay Bill, No s. 3.

37. If the plaint does not contain the several particulars hereinbefore required to be specified therein, or if it contains particulars other than those specified, or if the statement of particulars is unnecessarily prolix, or if the amount of relief is under-valued, or the stamp insufficient, the Court shall, at its discretion, order the necessary amendment to be made then and there, or within three days from the date of such order.

Amendment of plaint.

Bombay Act III 1876, s. 8.

38. When the plaint is in due form, the Judge shall require the plaintiff to subscribe and verify it in his presence in open Court in the manner following, or to the like effect:

Plaint to be subscribed, verified and endorsed.

Bombay Act III 1876. ss.

"I, *A.B.*, the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

The Judge shall endorse the plaint to the effect that it was duly subscribed and verified.

If the plaintiff cannot write, the verification may be written for him in open Court, and the Judge shall in such case record that the verification was made in his presence, at the request of the plaintiff, who affixed his mark to his name in token of the authenticity of the verification.

39. The Judge shall reject the plaint if it appear upon the face of it, or after questioning the plaintiff, or on summary enquiry as the case may be, that—

Rejection of the plaint.

Bombay Act III, 1876, s. 9. C. P. C., ss. 53-5

(a) no cause of action is disclosed;

(b) the subject of the plaint is not within the jurisdiction of the Court;

(c) the suit is barred by any positive rule of law.

The reason of rejection shall be written on the plaint by the Judge with his own hand.

40. If the Judge admit the plaint, he shall receive and file it, and shall appoint a convenient day and place for the trial and final disposal of the case. The day to be fixed shall not be earlier, except by consent of both parties, than ten days, nor, except for unavoidable reasons, later than fifteen days from the day when notice of such appointment issues.

Procedure on admission of plaint.

Bombay Act III. 1876, s. 11.

Notice shall be given verbally to the plaintiff to appear with his documents and witnesses on the day and at the place appointed.

A summons shall at the same time be issued to the defendant.

41. If either party require his witnesses to be summoned to appear on the day and at the place appointed, the Judge shall issue summonses for that purpose.

Attendance of witnesses.

The service of summonses on witnesses shall ordinarily be performed through the parties themselves, or, if need be, by the village officers gratis, or by the officers of the Court.

Bombay Act III, 1876, s. 13.

42. If the plaintiff fails to attend with his documents, or omits to adopt measures to procure the attendance of his witnesses on the day and at the place appointed, and fails to satisfy the Court either on such day or within fifteen days afterwards, that he was prevented from so doing by some unavoidable circumstance, the Court shall reject the plaint, and may award to the defendant such compensation as it thinks fit for any expense and loss of time he may have suffered. Such rejection shall bar a fresh suit.

Effect of default of plaintiff.

C.P. C., s. 103.
C.P. C., s. 174.

43. No suit shall be heard or determined *ex-parte*.

If the defendant fails to attend, the Court shall adjourn the case and take steps to secure his attendance by the issue (*a*) of a fresh summons, or (*b*) of an order that he be arrested and brought before the Court.

Upon the defendant's appearance the case shall proceed.

Bombay Act III, 1874, ss. 14 and 15.

44. Upon the day originally appointed, or any day to which the case may be adjourned as aforesaid, the Court shall proceed to fix such issues as it may deem proper, to hear the evidence, and to pass judgment and issue its decree.

Hearing of the case.

The proceedings may be, from time to time, adjourned for sufficient reason.

Mad. Reg. V., 1816, s. 4, cl. 10.

45. In cases in which the matter at issue is of smaller amount or value than ten rupees, it shall be discretionary with the Court to take the depositions of the witnesses in writing or not.

Record of evidence.

C. P. C., s. 189.

In cases in which the matter at issue is of the amount or value of ten rupees or upwards, it shall not be necessary to take down the evidence of the witnesses in writing at length; but where the evidence is not so taken, the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Act XI, 1865, s. 18.

Written statements.

46. No written statement other than the plaint shall be received unless required by the Court.

C. P. C., s. 198.

47. After the evidence has been taken, and the parties have been heard, the Court shall pronounce judgment in open Court, either at once or on some early subsequent day, of which notice shall be given to the parties.

Judgment.

C. P. C., s. 203.

In any case in which the evidence of the witnesses have been recorded in writing at length, or in substance by a memorandum made by the Judge, the judgment need not contain more than the points for determination and the decision thereupon.

Act IV. 1877, s. 126, and Crim. P. C., s. 228.

In other cases, the judgment shall also contain the substance of the evidence, with a concise statement of the case and of the reasons for the decision.

C. P. C., s. 5.

48. The Chapters and Sections of the Code of Civil Procedure hereinafter mentioned extend (so far as they are applicable and not inconsistent with this Act) to Ryot's Courts, that is to say :—

Partial application of Code of Civil Procedure.

PRELIMINARY.— *Sections 1, 2 and 3.*

Chapter I.—Of the jurisdiction of the Courts and *res judicata*, except Section 11.

" II.—Of the place of suing, except Section 17, clause (*a*), Section 18, Section 20, paragraph 4, and Sections 22 to 24 (both inclusive).

" III.—Of Parties, and their appearances, Applications and Acts.

" IV.—Of the Frame of the Suit.

" V.—Of the Institution of Suits. Sections 49, 59, 60, 62, and 63.

" VI.—Of the Issue and Service of Summons. Sections 72 to 85 (both inclusive) and 87 to 90 (both inclusive).

" VIII.—Of Written Statements and Set off. Section 111, Section 112, paragraph 2, Sections 113 to 116 (both inclusive).

" IX.—Of the Examination of the Parties by the Court.

" X.—Of the Discovery and the Admission, etc., of Documents. Sections 137, 138, 141 to 145 (both inclusive).

" XIV.—Of the Summoning and Attendance of Witnesses. Sections 163 to 167 (both inclusive), Section 168 (substituting in the last paragraph "Ryot's Court" for "Court of Small Causes") to 173 (both inclusive), Section 174 except the explanation, Sections 175 to 178 (both inclusive).

Chapter, XV.—Of the Hearing of the Suit, etc. Sections 179, 180, 181, 186, 187, 188, 190 to 193 (both inclusive).

" XVII.—Of Judgment and Decree. Sections 199 to 202 (both inclusive), 205 to 212 (both inclusive), 216 and 217.

" XVIII.—Of Costs. Sections 220, 221 and 222.

" XIX.—Of the Execution of Decrees. Sections 230 to 258 (both inclusive), Section 259 (except in so far as relates to the recovery of wives) 263 to 335 (both inclusive), and excepting in any case so much as relates to the person, arrest or imprisonment of the debtor).

" XXI.—Of the Death, Marriage, and Insolvency of Parties.

" XXII.—Of the Withdrawal and Adjustment of suits.

" XXIII.—Of Payment into Court.

" XXIV.—Of requiring security for costs.

" XXIV.—Of Commissions.

" XXVI.—Of Suits by Paupers.

" XXX.—Suits by and against Trustees, Executors and Administrators.

" XXXI.—Suits by and against Minors and Persons of unsound mind.

" XXXIII.—Interpleader.

" XXXIV.—Of Arrest and Attachment before judgment. Sections 483 to 490 (both inclusive), and Section 491 so far as relates to attachments).

" XXXV.—Of Temporary Injunctions, etc. Sections 492, 494, 496 and 497.

" XXXVII.—Reference to arbitration.

" XLIX.—Sections 640, 641, 642, 643, 645, 648 (so far as relates to attachments) and 651.

Except as in this Act specially provided, the Code of Civil Procedure shall not apply to Ryot's Courts.

PART II.

CHAPTER V.—*Of Conciliation by Rural Justices.*

French Civil Procedure Code, Bo II. Chapter I.

Who shall be Rural Justices.

49. The following persons shall, in virtue of their office, be Rural Justices for the taluka in which they hold office; that is to say—

(*a*) The Assistant or Deputy Collector in charge of the taluka, and all Mamlatdars, Mahalkaris, and First Carkoons.

(*b*) All non-official members of any city or town municipalities in the taluka.

(*c*) (All non-official members of the District Local Fund Committee (if any) residing within the limits of the taluka, and all such members of the Taluka Local Funds Committee.

In addition to the above, the Local Government may, by notification in the official Gazette, appoint to be Rural Justices for the taluka in which they ordinarily reside, any persons whom it considers to be, by position, character and intelligence, qualified for the office.

Disputes may be brought to Rural Justices for conciliation.

50. When any difference of opinion arises between parties about any matter within the cognizance of a Ryot's Court under this Act, (1) either party may apply to one of the Rural Justices of the taluka for a settlement of the same by conciliation; or (2) both parties may jointly so apply for such settlement.

Procedure thereupon.

51. If the application be made by one of the parties only the Rural Justice shall, by a verbal or written summons, require the other party to appear before him within two days, or such longer time as may under the circumstances be reasonable, and shall direct the applicant to be there present also.

If the party summoned be resident in the same village as the party applying for conciliation, the latter shall ordinarily accompany the bearer of the summons for the purpose of explaining verbally the matter to which it relates. In other cases such matter shall be explained orally by the bearer of the summons, or in writing, as the Rural Justice may direct. Mad. Reg. IV, 186 s. 12, c. 2.

52. Any party who, without reasonable cause, neglects to attend in obedience to any such summons, may be fined by the Rural Justice any sum not exceeding rupees five, or may be arrested and brought before such Justice under a warrant issued by a Ryot's Court's Judge on the application of such Justice.

53. If both parties have jointly made the application, the Rural Justice shall forthwith, or as soon as reasonably may be, proceed to deal with matter.

Hearing of the case.

When all the parties are present as hereinbefore provided, the Rural Justice shall call upon each party in turn to explain his contention regarding the matter in dispute, and may take orally such evidence as he thinks fit.

Mad. Reg. IV, 1866, s. 15, c. 6.

Any witness duly summoned by the Rural Justice who shall refuse to attend, or attending shall refuse to answer, and any witness or party refusing to produce any document required, may be fined by the Rural Justice a sum not exceeding one rupee, or may, at the instance of such Justice, be proceeded against by a Ryot's Court Judge under Section 174 of the Code of Civil Procedure.

On the completion of such enquiry as he may deem sufficient, the Rural Justice shall use his best endeavours to induce the parties to settle the matter amicably in accordance with equity and good conscience, or to submit it to arbitration.

The Rural Justice may adjourn the case from time to time during the hearing for unavoidable grounds, and once at the close of the hearing for any time not exceeding three days, to give the parties the opportunity of considering any settlement which has been proposed.

54. If a settlement be effected upon the merits, it shall be forthwith embodied in an agreement or *rázináma*, which shall be signed by the parties and countersigned by the Rural Justice. Any such agreement shall have the force of a decree.

Procedure on conclusion.

If the settlement be that the matter shall be referred to arbitration, an agreement to that effect, shall be forthwith drawn up, and signed and countersigned as aforesaid.

If no settlement can be effected, the Rural Justice shall give to either party, on demand, a certificate that the attempt to effect conciliation has been unsuccessful, and that there is no obstacle to recourse to a Ryot's Court for a decision in the matter.

56. The Rural Justice shall keep a register in which he shall enter with his own hand or cause to be entered under his superintendence, the names of the parties in every case which comes before him, the dates of all their appearances before him, a brief account in current narrative form of the nature of the dispute, the allegations on either side, and the result of the proceedings.

Record.

PART III.

CHAPTER VI.—*Of Settlement by Arbitration.*

57. An agreement for reference to arbitration made through a Rural Justice may, if the parties so desire, be forwarded by such Justice to a Ryot's Court Judge of the division, and shall be filed in his Court. Any agreement so filed shall be deemed to have been filed under the last clause of Section 523 of the Code of Civil Procedure.

Who may be arbitrators.

[Bo]mbay Bill I, s. 6.

58. A reference to arbitration under Section 24 of this Act, for the purpose of ascertaining the sum to be allowed on account of the principal of the debt, if made by the Court of its own motion, be directed to any three persons resident in the same locality (as far as may be) as the parties, whom the Court deems to be of good character and competent.

59. The Local Government may from time to time, by notification in the official Gazette, appoint to be, within any specified local area, arbitrators recognised under this Act, the following persons, that is to say—

(*a*) the members for the time being of any local Arbitration Court;

(*b*) any persons holding the office of Rural Justice;

(*c*) any other person whom the said Government deems to be of good character and competent.

When any persons refer any matter of difference between them to any arbitrators recognised, such arbitrator shall, on application to a Ryot's Court Judge of the division receive from such Judge the assistance, by issue of process, provided in Section 513 of the Code of Civil Procedure.

Any reference to a recognised arbitrator may provide that, in the event of any party thereto giving notice within fifteen days of the date of this award to a Ryot's Court Judge of the division that he is dissatisfied with the same, the matter in dispute shall be referred back to the same arbitrators sitting with such Judge as President. When any such matter is so referred back, the decision shall be according to the opinion of the majority, and, in the event of an equality of votes, the opinion of the President shall prevail.

Arbitration to be promoted.

60. In any suit or matter, the Court shall at all times promote, by all lawful means in its power, the settlement of the questions at issue by agreement between the parties, or by arbitration.

PART II.

OF INSOLVENCY.

CHAPTER VII.—*Of General Insolvency.*

Local Government may order enquiry.

60. Whenever the Local Government is of opinion that the ryots generally of any village or group of villages, or any class of ryots are in a state of extreme indebtedness or insolvency, it may appoint such officer as it thinks fit, to hold an enquiry into the nature and extent of the debts and liabilities of such ryots or class of ryots, and the sufficiency of their property, whether moveable or immoveable, to discharge the same, and otherwise to proceed under this Chapter.

Effect of order.

61. On the publication of such order in the official Gazette, the following portions of Act XIV of 1877 (*an Act to relieve from Incumbrances the estates of Thakurs in Broach an Kaira*) shall (sofar as they are applicable) come into force in respect of all such ryots, or all ryots of such class, and their property ; that is to say—

Section 9, the first and second paragraphs, and clauses (*a*) and (*b*) of the third paragraph substituting the words " liquidation scheme is unsanctioned " for the words " continued management."

Section 12, excepting that the notice need not name individuals, and shall fix a day for the appearance of all claimants, and shall not be published in the Gazette, and that it shall be in the Marathi language ;

Sections 13, 14, 17 (down to and including the word " same "), 18, 20, 21 (substituting the words " of the ryot " for the words " under management "), 29, 30, 31 (clauses (*a*) and (*b*) and clause (*c*) except so far as it relates to interest), 34, 35, 36, and 37.

62. In preparing the liquidation scheme, the said officer shall exercise the powers conferred by, and proceed as far as may be in the manner, prescribed by, Sections 68, 69, 70, 72 and 79 of this Act.

The liquidation scheme relating to any ryot may provide for the recovery or discharge of any or all of the debts or liabilities of any such ryot to whom it relates, as contemplated in Sections 73 to 78 (both inclusive) of this Act.

Abandonment of inquiry.

63. At any time previous to the sanction of a liquidation scheme relating to any ryot, the said officer, may, with the sanction of the Commissioner, by order direct that on a date fixed by such order the enquiry so far as relates to such ryot shall be abandoned. Act XIV, 1877, s. 1

On the date so fixed, the proceedings in enquiry shall terminate, and the proceedings, processes, executions, and attachments, stayed and suspended under Section 9, and the debts and liabilities barred by Section 14 of Act XIV of 1877 shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the enquiry has continued shall be excluded.

CHAPTER VIII.—*Of Individual Insolvency.*

Power to apply for declaration of insolvency.

64. Any ryot whose debts amount to rupees fifty or upwards, and any creditor who claims from any ryot an aggregate sum of not less than fifty rupees, may apply in writing to the Ryot's Court for the place where such ryot resides, to declare such ryot an insolvent Bombay Bill I, s. 1

Every such application shall be subscribed in the manner prescribed in Section 38.

ombay Bill I, s. 12.

Contents of application by debtor.

65. If such application is made by the debtor, it shall set forth—

(*a*) the amount and particulars of all pecuniary claims against him;

(*b*) the names and residences of his creditors, so far as they are known or can be ascertained by him;

(*c*) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

(*d*) the place or places in which such property is to be found; and

(*e*) his willingness to put at the disposal of the Court all such portion thereof as is by law liable for debt.

mbay Bill I, s. 13.

Contents of application by creditor.

66. If such application is made by a creditor, it shall set forth—

(*a*) the name and residence of the alleged debtor;

(*b*) the amount and particulars of his claim against the alleged debtor;

(*c*) the name and residence of any other person to whom the alleged debtor is believed to be indebted; and

(*d*) the grounds on which it is sought to have the alleged debtor declared an insolvent.

nbay Bill I, s. 16.

Notice to issue on ryot's application.

67. When the application is made by a ryot, the Court shall cause a copy thereof, with a notice of the time and place at which it will be heard, to be stuck up in Court, and to be served on each creditor named therein.

nbay Bill I, ss. 14 15.

Creditor's application how to be dealt with.

68. If upon perusal of an application made by a creditor, and after such examination of the applicant (if any) as the Court thinks fit, the Court deems that there is not sufficient *primâ facie* reason to believe that the alleged debtor is in insolvent circumstances, it may reject the application.

If the Court deems that there is such reason, it shall fix a day for the alleged debtor to produce a statement, verified in the manner prescribed in Section 38, setting forth the particulars specified in clauses (*a*), (*b*), (*c*), and (*d*) of Section 65, and to show cause why he should not be declared an insolvent, and shall cause a copy of the application, with a notice in writing of the time and place at which such cause is be shown, to be served on the said debtor.

bay Bill I, s. 17.

General invitation to other claimants.

69. In the case contemplated by Section 65 or by Section 66, the Court may, by proclamation or otherwise as it thinks fit, publicly invite the appearance on the day fixed of all persons having claims against the debtor.

bay Bill I, s. 18.

Arrest and attachment in certain cases.

70. If, at any time after an application has been made, the Court is satisfied that the debtor has already removed, concealed, or destroyed or is about to remove, conceal, or destroy, any books, papers or property, with the intent to avoid examination in respect of his affairs, or otherwise to delay or embarrass the insolvency proceeding, the Court may, by warrant, cause any books, papers, or property in the possession of such debtor to be attached and to be safely kept so long as the Court directs.

ay Bill I, s. 19.

Proceedure at first hearing.

71. On the day fixed for hearing the application, the Court shall examine the alleged debtor in the presence of such of the creditors as appear, as to his circumstances and present or future means of payment, and shall hear any creditors opposing the application.

ay Bill I, s. 20.

Declaration of insolvency.

72. If the Court is satisfied that the debtor's liabilities amount to rupees fifty or upwards, and that he is in insolvent circumstances, it shall declare him to be an insolvent.

y Bill I, s. 22, C., s. 352.

Inquiry into debts and assets.

73. Upon such declaration of insolvency, the Court shall proceed, upon such day as it may fix, to hear such evidence as the alleged creditors may produce regarding the amount and particulars of their respective claims, any reply and evidence which the insolvent may offer in opposition thereto, and to ascertain the available assets of the insolvent.

The Court shall determine, in accordance with Sections 22 to 29 (both inclusive), the amount of the insolvent's several debts, and shall frame a schedule specifying such debts, the names of the persons to whom they are due, and the order in which they are payable, and also the available assets of the insolvent.

A copy of such schedule shall be stuck up in the Court-house.

Amendment of schedule.

74. Any person claiming to be a creditor of the insolvent who has not appeared during the previous proceedings may, within one month from the publication of the schedule, apply to the Court for the amendment of the schedule by the insertion of his name and claim therein. If the Court is satisfied that he was prevented by unavoidable causes from previously appearing, it shall hear any evidence the applicant may produce and the defence of the insolvent and then comply with or reject the application. Bombay Bill I, 23 C P. C., s. 353.

Any creditor mentioned in the schedule may, within one month from the publication thereof, apply to the Court for an order altering the schedule so far as regards the amount, nature, particulars or precedence of his own debt or that of another creditor, or striking out the name of another creditor. The Court after hearing the insolvent and any other creditors concerned, shall comply with or reject the application.

Any creditor mentioned in the schedule may, within one month from the publication thereof, apply to the Court for the addition to the schedule of any available assests mentioned therein, and the Court, after hearing the applicant and the insolvent, and any other parties concerned, shall comply with or reject the application. The Court may at any time, of its own motion or on the application of the insolvent, so amend the schedule.

Fraudulent transfers.

75. The Court may at any time annul any transfer of the insolvent's property, or of any part thereof, which shall be shown to have been made by the insolvent with intent to defraud his creditors or to give an unfair preference to any of them, and may direct that the property so transferred shall be entered in the schedule as available assets and dealt with accordingly. Bombay Bill I, s. 20, c. (d).

Liquidation of debts.

76. Upon the final settlement of the schedule of debts and assets the Court shall proceed Bombay Bill I, s. 26

(a) to pay debts, fines, and penalties (if any) due by the insolvent to Government;

(b) to pay such costs of the insolvency proceedings as may be due under any rules made by the Local Government;

(c) to distribute the balance of available assets among the scheduled creditors rateably according to the amounts of their respective debts, or according to any order or preference fixed in the schedule.

77. In order to make the payments specified in Section 76, the Court may convert into money such portion of the available moveable property other than money as it thinks fit.

78. In order to make the distribution required by clause (c) of the same section, the Court may, in its discretion, assign specific properties at such valuation as it deems equitable, to individual creditors, in lieu of converting the same into money.

The Court may likewise direct payment to be made by the insolvent by instalments out of the annual proceeds of specific properties, in lieu of so assigning or converting the same.

Powers of Court if assets insufficient.

79. If the debts cannot be fully liquidated in manner hereinbefore provided, the Court may

(a) direct that the balance be paid by the insolvent by instalments out of the annual proceeds of his immoveable property; or

(b) direct that a portion of such balance be so paid, and grant the insolvent an absolute discharge as to the remainder; or

(c) grant the insolvent an absolute discharge as to the whole of such balance.

Recovery of instalments.

80. Any instalment fixed under Section 78 or 79 shall, if the Court so direct, be levied and paid to the creditor by the Collector, and may be recovered as a revenue demand.

Until such instalments have been paid—

(a) the property shall not be transferable by the insolvent or his heirs; and

(b) the insolvent or his heirs shall not receive a final discharge with respect to any balance of such instalments

(c) the insolvent or his heirs shall be liable to be arrested and imprisoned in the civil jail for a term which may extend to one year, in the event of their fraudulently neglecting or refusing to cultivate, or let for hire or cultivation, as the case may be, any or all of the said property.

Provided that the insolvent or his heirs may at any time pay up the full amount of any instalments due, and shall thereupon receive a final discharge.

Bombay Bill I, s. 26. C. P. C., s. 359.

Procedure in cases of fraud.

81. If at any time previous to the grant of a final discharge it is shown to the satisfaction of the Court that in the course of the insolvency proceedings—

(a) the debtor has wilfully made any false statement as to the debts due by him, or as to the property belonging to him whether in possession or expectancy or held for him in trust, or has fraudulently concealed or removed any property; or

(b) a creditor has wilfully made any false statement as to the amount, particulars or precedence of his claim, whether such statement affect the debtor or other creditors; or

(c) either debtor or creditor has concealed any fact material to the issue, or committed any other act of bad faith regarding the matter in issue;

the Court may send the offender to a Magistrate to be dealt with according to law.

PART V.

CHAPTER IX.—*Of Pleaders, etc.*

French Civil Procedure Code, Book II, Chapter I.

Pleaders not admissble in certain cases.

82. In all proceedings before a Rural Justice, and in proceedings before a Ryot's Court Judge or an arbitrator in which the amount claimed does not exceed fifty rupees, the parties shall ordinarily appear in person and plead on their own behalf.

Bd. Reg. IV., 1816, s. 9.

In such proceedings, either party may, on reasonable cause shown, be permitted by the presiding officer to appoint a relative, servant or dependant to appear and plead either conjointly with or instead of such party.

Bd. Reg. V, 1816, s. 3.

No advocate, pleader, vakil, mukhtar or attorney shall be permitted to appear in any such proceeding.

Appointment of pleader for debtor in certain cases.

83. Whenever, in proceedings other than those referred to in section 82, a creditor appoints a pleader to appear on his behalf, and the presiding officer is of opinion that the debtor is not in such pecuniary circumstances as to admit of his obtaining similar counsel, such officer may with the consent of the debtor direct the Government Pleader, or other competent person to undertake his defence.

PART VI.

CHAPTER X.—*Of Court-fees and Process-fees, and Batta.*

No Court-fees in conciliation cases.

84. No Court-fees shall be payable on any documents required for or in consequence of proceedings before a Rural Justice.

Court-fees leviable in cases not exceeding rupees fifty.

85. In proceedings before a Ryot's Court Judge or arbitrator, no Court-fees, excepting such as may be prescribed by law for the plaint or original application, shall be payable unless the amount claimed exceeds fifty rupees.

86. No batta or subsistence money shall be claimable by or paid to witnesses unless (1) they have been summoned by the Court, and (2) they have been prevented from attending to their ordinary avocations for more than one day or have been obliged to travel in obedience to the summons, more than five miles from home.

Local Government may make rules about Process-fees and Batta.

87. The Local Government may from time to time make rules not inconsistent with this Act as to—

(a) the fees chargeable for serving and executing all processes issued under this Act;

(b) the remuneration of the peons, and all other persons employed by leave of a Court in the service or execution of processes;

(c) the amount of subsistence money and travelling expenses to be paid to witnesses summoned to attend in Ryot's Courts.

PART VII.

CHAPTER XI—*Of Registration.*

Appointment of Village Registrar.

Bombay draft with letter No. 4579, 5th September 1878.

88. The Local Government may appoint such persons as it thinks proper, whether public officers or not, to be Village Registrars.

Each such person shall be Village Registrar for such local area as the Local Government shall prescribe.

The Local Government may appoint any person by name or in virtue of his office to exercise all or any of the powers conferred on it by this section.

Instruments to which ryot is a party not to be deemed valid unless executed before a Village Registrar.

89. No instrument executed after the passing of this Act, to which a ryot residing in any place in which this Act is in force, is a party shall be received in any Court of Justice, or by any persons having by law or consent of parties authority to receive evidence, as creating, modifying, transferring or extinguishing or purporting to create, modify, transfer, or extinguish any right or obligation;

or as evidence in any civil proceeding;

or shall be acted upon in any such Court, or by any such person as aforesaid, or by any public officer,

unless such instrument is written by, or under the superintendence of, and is attested by a Village Registrar.

Instruments to be written by, or under the superintendence of, a Village Registrar, and executed in his presence.

90. When any persons, one or more of whom is a ryot, desire to execute any instrument they shall present themselves before the Village Registrar appointed by the Local Government for the area in which the said ryot or any one of the said ryots resides, who after satisfying himself in such manner as he deems fit as to the identity of the parties, and receiving from them the prescribed fee, and the stamp, if any, which may be necessary, shall write the instrument, or cause the same to be written under his superintendence, and require the parties to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall be attested by the Village Registrar, and also, if any of the parties thereto is unable to read and write, by two respectable witnesses.

Registration of instruments by Village Registrars.

91. Every Village Registrar shall keep a register of instruments executed before him.

As soon as any instrument has been completely executed before a Village Registrar, he shall make, or cause a copy of it to be made, in his register. He shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties, if there be more than one.

Previous to delivery the original instrument and each such copy shall be endorsed under the Village Registrar's signature, with the date of registration, the name and residence of the Village Registrar, and the volume and page of the register in which the instrument has been registered.

Consideration to be fully stated in every instrument executed before a Village Registrar.

92. In every instrument written by or under the superintendence of a Village Registrar, the amount and nature of the consideration shall be fully stated.

The Village Registrar shall also endorse the instrument with a note, under his signature recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

If the instrument is to be executed in supersession, or partly in supersession of previous instruments, such instruments shall be produced before the Village Registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village Registrar under his signature, for identification.

Registration under this Act to be deemed equivalent to registration under the Indian Registration Act, 1877.

93. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village Registrar, but has been otherwise executed, shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

94. Any person who, not being a Village Registrar, writes otherwise than by direction and under the superintendence of a Village Registrar, any instrument which this Act requires to be executed before a Village Registrar, shall be punished for each such offence, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Penalty if person not being a Village Registrar writes any instrument.

95. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party, to be executed before a Village Registrar.

Exemption of instruments to which Government or any officer of Government is a party.

96. The Local Government may from time to time frame rules not inconsistent with this Act regulating the appointment, suspension, dismissal, duties, supervision, and remuneration of Village Registrars, and prescribing the fees to be levied for registrations by them.

Local Government may frame rules.

PART VI.

CHAPTER XII.—*Miscellaneous.*

97. The Local Government may from time to time make rules, consistent with this Act as to—

(*a*) the distribution of business in Ryot's Courts;

(*b*) the forms of process, accounts and registers, to be used in any Ryot's Court, or by any Rural Justice or arbitrator;

(*c*) the mode in which all proceedings shall be kept and recorded;

(*d*) the holidays to be observed in Ryot's Courts; and

(*e*) generally to carry out the provisions of this Act.

98. All rules made under this Act shall be published in the local official Gazette and when so published shall have the force of law.

Rules to be published, etc.

No. 55.

Explanatory note of the preliminary draft of the Deccan Ryots' Relief Bill.

1. In this Note I do not propose to argue at length the various important questions which the subject raises. Many have already been argued out in the official correspondence; many more are fully stated in their various aspects in the Commision's report or its appendics. I shall merely explain, where necessary, in as few words as possible, the intended nature and object of the provisions I have incorporated in the Bill, or the grounds which have led me to prefer them to others which have been proposed.

Scope of this note.

2. Believing that there is often a great deal in a name, I have appropriated for the Bill and the new Judges and courts the word "ryot" in preference to "agriculturist" as being short, universally understood in both English and vernacular, and likely to be popular.

The designation "ryot."

3. The instructions of the Secretary of State require, as the main remedy for the evils found in the Deccan districts, the adoption of measures which shall mitigate the harshness with which the courts of justice and the law operate upon the debtors who form the bulk of the population. Courts are to be provided which shall be less technical, less harsh, less dilatory, less expensive, more absolute, and more accessible, than those we have at present. I have consequently placed "Ryot's Courts" in the forefront of the Bill, and made them the pivot on which it turns.

Nature of the new courts to be instituted.

4. As instructive examples of how our object may be attained, we have offered for our consideration (1) the Native punchayet system, (2) the Madras Village Munsif system, and (3) the French *juge de paix* system.

5. The native village punchayet system exists in Madras in full legalized force under Madras Regulation V. of 1816. Punchayets are constituted by the village headman in each case; their jurisdiction is unlimited as to amount, but depends on consent of the parties; professional pleaders are excluded; their proceedings are exempt from all stamp duties, fees and other costs except paper and institution fee), and their decisions are only reversible by the Zila Judge on

proof of "gross partiality" or corruption. The establishment of punchayets in villages, or circles of villages, in the North-Western Provinces, for the trial of a variety of petty cases criminal as well as civil, is ably advocated in an article, supplied to me with my instructions, published in a Native newspaper in September last. Finally, we have in Bombay a strong popular movement in certain localities for the establishment of private arbitration courts, and various examples actually at work.

6. Each of the above institutions might be reviewed at length, were that within the scope of this note. As far as I have been able to ascertain, the Madras village punchayets are a moribund institution, and the number of suits they decide is insignificant. The district punchayets were abolished in 1873. The Native newspaper above referred to admits that "in the present times of freedom and liberty, when even children do not obey their parents, the village headmen have no authority and influence," but thinks that if the legal authority of the latter were restored, they would be held in honour by the people. It proposes, however, an appeal to the civil court from every decision of a punchayet. My own opinion is that whatever may be the efficiency of these punchayets in Madras, where they are a survival of ancient times, and where society is still in a comparatively simple state, it would be impossible at the present day to constitute them by law throughout all villages or village circles in our Deccan districts. The people are now too independent, too active-minded, too irreverent to accept implicitly the decision of village seniors as such, and the latter are now too preoccupied with avocations away from home, as also too interested and involved in the very matters they would in the Deccan have to deal with, to make them available as Judges. Our advanced conditions postulate a more skilled judicature, better Judges, and consequently fewer of them, and these the Government must in the main provide. But every effort should be made to encourage arbitration and the local movement for arbitration courts, which, as long as they can by their own merits maintain their credit with the people, will be a powerful supplement to our own courts, and may gradually relieve them of much work.

7. The Madras Village Munsif system, constituted under Madras Regulation IV of 1816 is well worthy of attention. It is a remarkable fact that the Munsifs dispose of nearly one-fourth of the whole civil litigation of the Presidency. In other words, 45,000 suits, for which the people in Bombay would be dragged to our regular courts, with all their attendant delay, cost, and harshness, are in Madras quietly disposed of at the people's own homes without any one of these evils. For the reasons above given regarding punchayets, I do not believe that we in Bombay could successfully impose on our patels this, to them novel, function; and there is this further difficulty in their case, that the bulk of our petty suits are brought by money-lenders with whom the patel would too often be, by want of education, or by absolute interest, unqualified to cope. But we may note the fact that a very inferior agency can deal successfully without appeal of suits not lower in value, though differing somewhat in nature, from those with which we have to deal.

8. The French *Juge de paix* has three jurisdictions :

(1) Power to try suits up to 100 francs, or, say, R50.

(2) Conciliation *sur lettres*—a form in which he puts gentle pressure upon parties to come to a settlement in cases he has power to try.

(3) Conciliation *à l'audience*,—in which he similarly tries to bring to an understanding the parties in cases beyond his jurisdiction.

For both forms of conciliation, the citation alone has, in a large number of cases, the effect of bringing the parties to an understanding without actually appearing.

I do not think that we have now in the Deccan any *class* of persons of sufficient independence, honesty, leisure, and attainments to be invested with, and successfully exercise, civil jurisdiction as the *juges de paix* do. If there are any isolated individuals fit for it, they can under the proposed draft Bill, be made Honorary Ryots' Court Judges, and can sit with other stipendiary Judges, or independently, as the District Judge directs This disposes of the two first heads above. But there are many persons who may well have authority to effect "conciliation à *l'audience*," and I propose to give this a prominent place in the Bill. Exercise of this authority will be excellent training, and successful individuals might be in time selected to be Honorary Ryots' Court Judges.

9. Before leaving this part of the subject, I may say that I have ignored the Small Cause Court system as by law established, because, though good in itself in large towns, it seems to me incapable of adaptation to the peculiar needs to be satisfied. The matters cognizable are different, the principles of law unsuitable, the procedure too formal, and the control

insufficient, and any modification of the Small Cause Courts Acts to meet our purpose fully is practically impossible. Leaving other systems intact for those whom they suit, legislation for the indebted ryot must be independent, complete, and self-contained.

Explanation of the Bill.

10. I now propose to follow the principal divisions of the Bill, making remarks, chiefly explanatory, where they seem to be required.

Preliminary.

11. The power of extension to other parts of the Presidency has been inserted, in accordance with the consent given in paragraph 18 of the Government of India's letter No. 696 of November 27th, 1878.

Constitution and control of Ryots' Courts.

12. The Bill contemplates the breaking up of every taluka into divisions of reasonable size, and the establishment of a ryots' court in each. What should be the size of these divisions it is impossible to say beforehand. Generally speaking, every ryot ought not to be more than eight or ten miles from his court. But only the local officers, who know the character of the population, the amount of their probable litigation, the natural features of the country, etc., can map out the divisions, in consultation with the Commissioners, and frame a workable scheme. Every existing subordinate Judge would of course become the Ryots' Court Judge of a division round his head-quarters. Some urban divisions might need two Judges. How many new Ryots' Courts Judges would be required depends of course on the number of divisions; but it would be well to provide a supernumerary in the district, to relieve temporary pressure in any locality, to sit on benches when required, and to fill temporary vacancies.

13. For every division two or three convenient villages, in addition to the head-quarters should be fixed, at which the Ryots' Court Judge should hold his court at stated periods, throughout the year, and he should also, during the fair season, go to other villages, and generally become familiar with the people and the working of his court in his division.

14. No system can work well without efficient supervision by superior authority. What would our village accounts and ryotwari system, our talatis and kulkarnis, be without the constant check supplied by the inspection of general duty carkun, first carkun, and mamlatdar, without jumabandi and tests of accounts and receipt books done by the Assistant or Deputy Collector; and what would our mamlatdars and mahalkaries, and their treasuries and offices be without the two or three inspections a year they get from Assistant or Deputy and Collector; nay more, is it not admitted to be necessary for efficiency that the Collector shall tour about for four or five months of every season, and do the jumabandi of every taluka in turn? Such being the case in the Revenue Department, it seems unreasonable to expect that a judicial system should work like a machine, without supervision and intervention, except that of formal appeal whenever somebody at the top turns a handle. A tendency has greatly developed of late years to overlook the fact that the judicial is a vast executive department, and that its efficiency and success in doing justice in a very large measure depend on the efficiency of its executive machinery. Active executive supervision and the going of Judges on tour have gradually diminished till in some districts there remains little worthy of the name. I am not blaming judicial officers for this. I know that it is the press of work which has deprived them of what was in many instances a very congenial branch of duty. But the fact remains and is none the less to be lamented.

15. Convinced that without efficient executive supervision the new courts must prove a failure, I propose that the District Judge should have a semi-executive Assistant who during the monsoon might be chiefly occupied in the ordinary duties of an Assistant Judge, but during the fair season should give his whole time to travelling about inspecting the courts, mixing with the people, trying cases himself, sitting *in banco* with the local Judge of every court to help in difficult general issues, or to appreciate the mode of working (a duty on which stress is laid in paragraph 33 of the Secretary of State's despatch), and watching the action in conciliation or arbitration. He would probably also have time to supervise the ordinary action of the Sub-Judges' Court, and thus the general judicial system would incidentally be much improved. If one such Assistant were found enough for two districts, the Bill admits of such an arrangement. It also provides for the District Judge so trying cases and sitting *in banco* as desired by the Secretary of State, though I doubt his being able in practice to find time to do so often. In case it should be found necessary at the outset to place the entire experiment under one or two special officers, the Bill allows of a Joint Judge being appointed to take the place of the District Judge, and of his holding office in more districts than one

But as I deem it very important that the whole judicial system should be one, and no rivalry should grow up between the new and old courts, I would recommend that arrangement being adopted only temporarily, if at all.

16. As to the class of men to be made Ryots' Court Judges, and the cost of the Courts what seems wanted is men of some age, experience, temper and urbanity; high legal qualifications are always valuable if unaccompanied by a narrow and unsympathetic mind, but they are not in this case indispensable. We have numbers of first carkuns on Rs. 50 and Rs. 60 per mensem, and of mamlatdars on R100 and R150, performing duties, including those of third and even second class Magistrates, not a whit less delicate and onerous than those of a Ryots' Court Judge under the Bill. I would place the Ryots' Court Judges in three grades,—on R100, R150, and R200 per mensem. The first grade would thus get the same pay as the lowest grade of existing subordinate Judges, and the whole would be one service. I have no doubt that the Collector's and Judge's subordinate establishments could supply competent individuals. Inexperienced youths with B.A. and LL.B. degrees should be eschewed. Considering the greater simplicity of the proposed procedure, establishments smaller than those of ordinary subordinate Judges ought to suffice, but any exact estimate is obviously impossible at this stage. Supposing, however, that the existing courts were even doubled, thus giving 48 divisions, and that two Assistant Judges were provided to supervise them in the four districts, the cost, including establishments, would not exceed R 1,20,000.

17. Regarding the sources from which funds for the new organization are to be derived, it might be sufficient for me to quote, in passing, the remark in paragraph 28 of the Secretary of State's despatch, that it is imperative to remedy the defects brought to light, even though an addition to the costs of administration be involved. But I may add that as long as the proceeds of stamps, court fees, etc., bring in a revenue far in excess of the cost of judicial administration, we have a fund legitimately applicable to the improvement of the latter. Indeed, it would seem worthy of consideration whether the account of such receipts and expenditure ought not to be more localised than at present, so that heavy additions to the burdens of an indebted peasantry may not be imposed in order to make good deficiencies in wealthy communities well able to pay in full for the legal privileges they enjoy.—(See Deccan Riots Commission Report, Appendix A, page 292.)

Jurisdiction of Ryots' Courts.

18. The list of matters cognizable (Section 15) has been carefully framed to include all the matters really involved in the money-lending with regard to which remedial measures have been sanctioned.

19. The powers to be exercised by Ryots' Court Judges are an important consideration. They ought to depend upon the average value of suits. This we have no means of ascertaining precisely. From the Deccan Riots Commission Report it would seem that out of all the suits of all kinds in subordinate Judges' Courts, about 85 per cent. were for money and for sums under R500; and further that, of these about three-fourths were for less than R100 and nearly two-thirds for less than Rs. 50. Again, according to the Administration Report for 1877-78, 36 per cent. of the suits under R100 were for less than R20, and the Secretary to the Poona Arbitration Court lately deposed before the Famine Commission that one-sixth of all claims are for less than R10. In Madras the proportion of small suits is much larger. Considering that the object in view is to prevent the people being taken far from their homes, and that the amount claimed is, owing to false bonds and one cause or another habitually above the sum really due or likely to be awarded under the new system, I propose R100 as the ordinary jurisdiction of a Ryots' Court Judge.

For the cases from R100 to 500 I propose three methods to the option of the suitor—(1) certain of the Ryots' Court Judges, in practice probably those who are subordinate Judges at the taluka head-quarters, and a few others who may be exceptionally good, should be especially empowered, to hear cases up to R500. The suitor may (Section 5, last clause) present his plaint to the nearest Judge so empowered, and have his suit heard in the division where he resides when that Judge comes on circuit there; or (2) he may present it to the Ryots' Court Judge of his own division, who will hear it and pass judgment subject to confirmation; or (3) if he can get his opponent to agree, the last-mentioned Judge may dispose of it finally.

Cases involving above R500, which will be extremely rare, will be heard by a specially empowered Judge only, and will be subject to confirmation. Considering that in Madras the illiterate heads of villages may (with consent of parties) try cases up to the R100 limit, that Madras village punchayets try by consent without any limit at all, and that, when invested

with Small Cause Court powers, a subordinate Judge on ₹200 per mensem may now try without appeal cases up to ₹50, while a 1st class subordinate Judge so invested tries up to ₹500, I hope that the above powers, under all the contemplated safeguards, will not be thought excessive for the competent class of persons for whom the office of Ryots' Court Judge is designed.

20. An absence of appeal up to a limited amount is contemplated in paragraph 31 of the Secretary of State's despatch; it is now established successfully in all the instances above-stated, and it seems essential to the success of any scheme for the constitution of courts such as are declared to be wanted. At the same time, in addition to the safeguards of confirmation or consent above proposed, and to the power given to the District and Assistant Judges (Sections 10 and 12) of withdrawing cases from a court, or staying proceedings pending hearing by a bench, it seems desirable to provide (Sections 20 and 21) for correction of errors by review and for revision on calling for the record. The supervision of a somewhat analogous nature exercised by the Collector and his Assistant over the civil suits tried without appeal by mamlatdars (Bombay Act III of 1876, formerly V of 1864) has been tried for many years and found to be most salutary.

Principles of trial and judgment.

21. It has been from the first contemplated that the Bill for the relief of the Deccan ryots should contain alterations in the substantive law, as well as in powers of courts. Some of these might perhaps be considered, if the classification of the Code of Civil Procedure be followed, to be mere matters of procedure, and nearly all might be distributed away under one chapter or another. But it seems to me better politically, while not less convenient, to make plain the character of our measure, and to collect all these leading features into one chapter (Chapter III).

22. Sections 24, 25, 26, 27 and 30 come from the first Bombay draft Bill, and Section 28 from part of Section 4 of the Government of India draft Bill, with a few slight verbal alterations.

23. With Sections 4 and 9 of the first Bombay draft I have felt much doubt how to deal, because they have elicited great difference of opinion between the Governments of Bombay and India, and I am not aware whether the correspondence on the point has terminated. Between such high authorities I do not presume to interpose or arbitrate. One point has, however, attracted my notice. The original Bombay proposal (paragraph 6) (a) of No. 308, dated 19th January 1878, was "that civil courts should be obliged to examine the merits of the claim for which they are asked to pass a decree," and this is rightly understood by the Government of India as meaning "to go behind the terms of the bond to enquire into the justice of the claim," etc. At the same time Section 4 of the first Bombay draft Bill provides that the court shall "*require the plaintiff to prove*" the origin of the debt, the nature of each subsequent transaction, the actual advance of the sum, etc., and much of the criticism which the proposal has elicited turns on the alleged injustice of throwing the burden of proof on the plaintiff (see, for instance, paragraph 7 of the Government of India's letter No. 696 of 27th November 1878). The two propositions are not quite identical, even bearing the Evidence Act in mind. Possibly the wording of the sections might be so re-cast as to express more closely what would seem to have been the intention of the Bombay Government, and it might, when so amended, prove acceptable to the Government of India. Such a re-casting I would, with much deference, offer in Sections 22 and 23 of my draft. These sections are in harmony with the principle which governs our Ahmedabad Talukdars, Sind Zemindars, and Broach and Kaira Thakurs Acts (see Section 15 of Act XIV, 1877), and the rules sanctioned under them. At the same time the measure, thus stated, seems to be in accord with sound general principles of equity, such as I find expressed by so great an authority as Sir Arthur Hobhouse in a note on the execution sale of land, dated 28th April 1874. Speaking of some remarks by "a man like Sir John Strachey, who treats the subject with equal sobriety and ability," Sir Arthur continues: "From my point of view I say that if what he has said, or the major part of it, be now true, it can only be met by a large increase of correctional power over contracts, to be vested in judicial tribunals and strengthened by a usury law. In our own country the Courts of Equity invented laws for the protection, not only of persons of weak character and immature age, but of expectant heirs of reversioners, in fact of all persons placed under temptation to make improvident bargains. When they came across the usury laws they made them subject to the more sweeping law created by themselves, and moulded them so as to produce fairly reasonable, though not very legal, results. They laid hold of mortgages, under which the mortgagee became absolute owner if the debt were not paid by a certain day, and declared that the parties did not mean what they had said, but that

notwithstanding the absolute forfeiture, there remained an equity of redemption in the mortgagor. * * * I do believe that sensible Judges, armed with a large power of moulding improvident bargains, and strengthened by a usury law in the back-ground, may administer more than a trifling palliative."

24. Section 29 proposes to put the period of limitation back to twelve years. The evils of the three years period are forcibly explained by the Deccan Ryots' Commission (paragraphs 107-109), and it would seem that if they had been aware that a new Limitation Act was then under consideration, they would have recommended a more important change than one affecting decrees alone (page 127 of Report). Since they wrote we have had one new Limitation Act (XV of 1877), and a Bill to amend that is now before the Council of the Governor General. One of their Members, Mr. Shambhooprasad, strongly urged a twelve years' limit; and I am given to understand that the general consensus of popular opinion, and the tendency of the evidence given before the Famine Commission, are in favour of it. The Bombay Government strongly advocated this limit in paragraph 7 of the letter No. 2202 of 6th April 1877. The recommendation was withdrawn in a later letter No. 5024 of 2nd October 1878, but in terms such that I feel uncertain whether the point may still be open to re-consideration, especially with the aid now procurable, of the Famine Commission's experience. Short accounts have undoubtedly great advantages, but these are counterbalanced by the cost and annoyance of a suit. The other provisions of my draft, if adopted, will so materially alter the relations of sowkar and ryot that I think twelve years, or at any rate six, might safely be adopted. In connection with the subject, I may invite attention to the remarks in the Governor General's Council on the passing of the Limitation Act (Proceedings, 19th July 1877, page 470).

25. Section 31 is not derived from any of the drafts. It is a natural consequence of the method in which I propose to deal with insolvency, which will be explained further on. Here I will merely say that there are numberless petty cases in which the means of the debtor, the claims against him, and his partial or total inability to satisfy them come before the court in the course of the hearing of his case. Where this is so, it is far shorter, simpler, and less troublesome to all parties to empower the court at once to settle the matter, than to let it go on through the perfectly useless, but costly and vexatious, forms of taking out execution, and applying for declaration of insolvency. Where the case was quite simple, the court would release the debtor from any balance which it was satisfied he could never pay. When there were several creditors, or other complications, and the amount exceeded R50, it would at once direct the taking of insolvency proceedings.

Again, the court would be able to act as above, not only when it had just heard a case and passed a decree, but also when an old decree, whether already partially executed or not came before it for execution, and it saw cause to enquire at once into the debtor's circumstances. It will be noticed that the whole section is merely permissive.

26. Section 32 is the first expression of a principle which I propose to introduce prominently into the insolvency portion of the Bill, and will notice again further on. It is simply this: that we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in recovering all that is justly due to him and reasonably recoverable. It is frequently stated in the papers before us that a creditor's difficulties begin when he has got his decree. Such difficulties should be reduced to a minimum. If we we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, I think that the destruction of the ryot's credit or his bondage to secret and extortionate agreements of sale of his property must ensue, and that all our well-intentioned interference will do harm instead of good. With a cheap, speedy, and equitable mode of recovery, interest ought not to exceed from 9 to 12 per cent. This Section (32) accordingly allows the court to use the Collector for the recovery of any instalments it may fix. But a limit of seven years is provided. If a man's debts are so heavy that he cannot pay them in this time, it is better that he should be declared an insolvent than that he should drag on as a slave without hope of amelioration or stimulus to exertion. Even thus he will have harder measure than an insolvent trader in a Presidency Town.

27. In Section 33 I have ventured to propose the abolition of imprisonment for debt. The powerful arguments and earnest pleading of the Deccan Riots' Commission will not be forgotten. Sir Erskine Perry in his Notes (which have, I see, been published by the Poona Sarvajanik Sabha), gives abolition his "unqualified adhesion." The debates in the Governor General's Council (Proceedings, September 21st, 1876, pages 243 and 271, also March 28th

and 29th in 1877) will show that the objections to the measure related less to its principle than to the variety of other arrangements, such as an effective insolvency law and a speedy recovery of *bonâ fide* debts by which it ought to be accompanied. These the Select Committee and the Council could not see their way to, and the matter may be held to have been deferred rather than negatived. But the present Bill provides both these necessary accompaniments, and in this altered position I trust that no hesitation will now be felt in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilised world.

Procedure.

28. Regarding this chapter I need not say much. For the great body of proceedings the provisions of the Civil Procedure Code of course suffice, so I have followed the precedent set by Section 5 and Schedule II. of that Code in the case of Small Cause Courts, by enumerating (Section 48) all the parts of the Code to be applicable to ryots' courts which are not elsewhere separately mentioned. In order, however, to shorten the procedure where practicable, and also to set forth in the Act a sort of visible backbone of procedure, I have thrown into order a few leading sections, some derived from Bombay Act III, 1876, and some from various sources. It may be that in some instances the subject of these might have been equally well provided for by a reference to the Civil Procedure Code, but then an awkward hiatus would have been created. If the Bill should become law, the Government would probably issue in English and the Vernacular an authorised edition of it, with the parts of the Civil Procedure Code which apply set forth in an appendix. The procedure proposed will, in the absence of numerous formalities, notices, hearings, and the like, be infinitely simpler than that of the full Code, and I see no way of abridging it further.

Conciliation by Rural Justice.

29. The provision of conciliation as a preliminary to litigation seems of incalculable importance. I have already noticed in paragraph 8 the French system, and may refer to a valuable Note on his own experiences of it which Mr. Fitzpatrick has kindly written for me, as also to the remarks of the Secretary of State, the communications from Sir Frederic Goldsmid, and the Notes of Sir Erskine Perry. The sections speak for themselves, but I may point out that both Section 34 and Section 50 have been so framed that application to a rural justice will be necessary when a dispute arises about the execution of a decree. I set much store on this, specially in the case of old decrees and hope that it will in very many instances lead to an amicable settlement without going to the court at all.

Arbitration.

30. I have stated in paragraph 6 my opinion that arbitration should be encouraged as far as possible, and my belief that the state of society does not admit of its being organised, as a regular part of our judicial system, in every village throughout the country. Arbitration courts are warmly advocated by various officers, and especially by Mr. Wedderburn (Judge of Ahmednagar) and the Poona Sarvajanik Sabha, but I have had some difficulty, after reading all their papers and the evidence of Mr. Ganesh Wassodeo Joshi (Secretary to the Poona Arbitration Court) before the Famine Commission, in ascertaining exactly how they would fit them into our existing institutions. Mr. Ganesh states in a letter dated the 21st instant, in answer to my direct enquiries, "that after consulting many gentlemen of experience," some of whom he names, what they propose is as follows—

(*a*) "Members of the punchayet to be selected by the people themselves, and a list of them to be published in the *Government Gazette*.

(*b*) "Whoever wishes to bring a civil claim against any person should bring it in the first instance before the punchayet, wherever it exists.

(*c*) "On the defendant being summoned, and on his appearing, should he consent to the trial of his suit by the punchayet, the punchayet should decide it.

(*d*) "In default of the defendant's appearance, the punchayet should be empowered to compel him to appear.

(*e*) "On defendant appearing, he should have the option of changing certain members of the punchayet to whom he takes objections and name others in their stead out of the punchayet list.

(*f*) "Should the defendant on appearing be unwilling to have his case tried by the punchayet, the plaint should be duly stamped, and should be tried by the Subordinate Judge on circuit as umpire with the assistance of punchayet.

(g) "In cases in which a deed of reference to the punchayet clearly states that the right to the appeal is not reserved, or in cases cognizable by the Small Cause Courts, an appeal shall not lie.

(h) "In places where the punchayet have been established, no civil court will entertain any suit, except as above provided."

These proposals are still very vague in some particulars, and open to obvious objections in others. The absence of punchayets throughout the country, and the difficulty of constituting them, lie at the root of the matter, and I do not see how we can, at present at least, create anything but a permissive system. This I have endeavoured to do by Section 59.

Our Bombay Regulations VII of 1802 and its sucessor VII of 1827 are in their gradual and complete disuse and instructive study.

General insolvency.

31. When the Kaira Thakurs' Relief Bill was under consideration there was a desire on the part of some officers to give to the Governor in Council powers to extend it other parts of the Presidency, but the idea was abandoned as likely to delay the relief for Kaira then urgently required. The Deccan Riots' Commission refer (paragraph 137) to certain proposals for dealing on a comprehensive scale with the indebtedness in the disturbed districts, which I have since heard were found to involve operations of liquidation on too extended a scale to be workable. Recommendations for special measures in isolated villages, or circles of villages have also, I understand, been made. I do not know what are the views or policy of the Government of Bombay on this subject, but in case they should wish the Bill to contain powers for such action within given areas, or with reference to particular classes of ryots, I have drafted a chapter for the purpose. I myself think that the provisions for individual insolvency render it superfluous. The chapter applies as much of the Broach and Kaira Thakurs' Act as is suitable, and supplies what remains wanting. Though an application of this sort, like that of the Code of Civil Procedure to Small Cause Courts, has on paper a rather intricate appearance, I believe no difficulty will be found in the practical working.

Individual insolvency.

32. Although the two Bills eventually introduced into the Councils of the Governor General and the Governor of Bombay contain no general provisions for insolvency, the first Bill proposed by the Government of Bombay did so, and I do not find that a comprehensive treatment of the subject has ever been definitely negatived or abandoned. Much difficulty was felt by the Select Committee on the Civil Procedure Code in dealing with the subject on account of the belief that the machinery of the courts was unequal to the task; but the Proceedings in Council will shew that the measure was not held to be undesirable in itself, and was merely laid aside until it could be seen to be practicable. The records of the Bombay Government testify, in the Bills brought forward at various times and the long series of favourable opinions expressed by authority during the last twenty years, to the importance of the subject and the acknowledged necessity for legislation. Sir James Stephen's Insolvency Bill of 1870, and the long correspondence in which it originated, point in the same direction. Sir George Wingate, in December 1877, wrote thus:

"Of all the remedies proposed I estimate the Insolvency Act as of the highest importance and as likely to prove the most efficacious."

Sir Erskine Perry, in his note above referred to, is equally strong in favour of the measure.

33. It seems to me that the main difficulty which has, of late at least, stood in the way of legislation, namely, the inadequacy of the court machinery, has been entirely removed, in the case of the Deccan, by the determination to increase the number of courts and place them nearer to the people. Under the organisation proposed in the Bill, ryots' courts will be quite strong enough to deal with insolvency, and in a relation to the people better calculated to ensure honest and successful working. I therefore earnestly hope that no objections will now be felt to the measure.

34. The nature of the insolvency provisions has next to be considered. The severity of the existing law, aggravated by the penalty of imprisonment, will not be denied. It is a question whether such insolvency as is now allowed is not an evil rather than a benefit. If a ryot can steer safely through all the pit-falls provided for him, he still can often not get a final discharge. The principle on which my draft proceeds is that already referred to, that the creditor should have full and effective help to recover all his just claims that can reasonably be recovered, but

that it is useless in the long run to the creditor, oppressive on the debtor, and dangerous to society, to enforce a life-long bondage. As to imprisonment, it was at best a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. Under the draft Bill it will be quite unnecessary for these purposes. It should be reserved for cases of flagrant fraud or dishonesty, and for these it should be meted out equally to debtor and creditor (see Sections 80 and 81). As to the details of the measure, the draft will speak for itself, and I need not dilate upon it. As to my limit of R50, it will be seen from paragraph 19 that the limit of R100 would probably be too high to meet the majority of cases of indebtedness.

Pleaders.

35. Section 82, regarding the exclusion of pleaders, accords with the suggestion of the Secretary of State, and is based on the French and Madras law. The provision in the French Code is most stringent and runs thus:—

"Aucuns avoués greffiers, huissiers, et ci-devant hommes de loi ou procureurs ne pourront représenter les parties aux bureaux de paix."

According to my draft, a sowkar could, for instance, send his *goomshta*, and a ryot could send or bring with him a clever son or nephew educated in a Government school.

The appointment (Section 88) of a Government pleader in certain cases has been suggested in several quarters, and seems reasonable. Probably it would not often be required.

Court fees, batta, etc.

36. This chapter goes on the general principle of reducing the costs of litigation wherever practicable. It follows the Madras Regulations IV and V in making petty suits free of court fees, and some other suits liable only to institution fee. The whole subject, however, requires looking into, and can only be settled by correspondence with the Government of India. Some charges, such as those on arbitration, have been vastly increased of late. In continuation of the remarks in paragraph 17, I may say that if a separate account where kept of all the stamp, process, and registration fees of the four districts, the Local Government would have grounds on which to move the Government of India to vary the fees from time to time, and great relief to the people might be afforded.

Registration.

37. This chapter follows the Bombay draft, with an alteration of designation to village registrars, which may help to show that it is not intended to set up a rival machinery side by side with the Department of Registration. Probably, some definite connection with supervision by that Department would remove objections and be in itself advantageous.

Miscellaneous.

38. This chapter speaks for itself. But Imay add that the system of vacations prevailing in the regular courts seems unsuited to ryots' courts, because it not only would reduce the outturn of work by twelve per cent., which we can ill afford, but would deprive the people, for that portion of the year, of the speedy justice which it is our object to provide. There can be no better reason for closing a Judge's office than for closing a mamlatdar's.

Conclusion.

39. I have now only to add that, though the substance of the draft Bill has long been matured, I have been prevented by other duties from taking the drafting in hand until very recently. This memorandum could not, of course, be written till the draft was complete. I fear, therefore, that both must bear marks of haste, which I would gladly have removed. It will also be no doubt understood that the draft is merely preliminary, and in some cases framed to elicit discussion or consideration of the subjects treated of.

CALCUTTA;
The 26th March 1879.

T. C. HOPE.

No. 59. Demi-official from the Honourable D. F. CARMICHAEL, to the Honourable T. C. HOPE,—dated Madras, the 23rd February 1879.

The following are some statistics of the litigation before Madras Village Munsifs:—

Taking the average of ten years, from 1867 to 1876 inclusive, the aggregate *mofussil* litigation, *viz.*, Village Munsifs, Revenue Courts, District Munsifs, Subordinate Judges, and District Courts, is 192,447 suits.

Forty-five per cent. and upwards of this total come under "small causes," *i.e.*, are brought on the small causes side of a District Munsif's Court, every Madras District Munsif having a small causes jurisdiction up to R50.

This leaves an average of about 106,000 ordinary suits, and the average number of ordinary suits disposed of by Village Munsifs comes to 45,000 nearly for the same period. So you see how large a share of the business falls to them, and naturally there is the proximity to the freedom from institution fees and other charges.

In 1877 there was a decrease of suits in all courts—about 12½ per cent. below 1876.

Taking 1876, when the large number of 53,600 suits was instituted in the village courts, I find the following classification :—

On written promise	6,310
Unwritten	32,918
Account stated	7,466
Money had and received	1,512
Goods sold and delivered	3,226
Rent	548
Recovery of personal property	1,609
Miscellaneous	11

They are not, therefore, usurers' courts, or you would have more parchment and wax. In Southern India those leeches fasten on the zemindars of our permanently-settled taluqs—generally a thirftless, proud, ignorant race, the descendants of the old poligars of the country. The jurisdiction of the village court, except with the consent of both parties, is limited to rupees ten: the plaintiffs are the village shop-keepers or a brother ryot, often a member of the same family as defendant.

As to the duration of the suits, there is no exact information; but Village Munsifs show, I find, a better return of "percentage of suits disposed of to suits for disposal" than any other judicatory in the Presidency, *e.g.*, the general average for the Presidency is 77·14 for last year in suits not being small causes (where the proportion is as high as 92·55); the precentage for Village Munsifs is 81·77; District Munsifs, who come next best, show 75·37.

I note you are preparing a measure for the relief of the indebted agriculturist; but we have not got the man here. Our holdings are very small, and the body of ryots very poor, but not in bondage to any man. It is not worth any body's while to get them into his clutches.

Telegram from the Honourable T. C. HOPE, Calcutta, to the Honourable D. F. CARMICHAEL, Madras. No. 57.

Thanks for letter. Kindly write proportions of village suits above ten rupees and proportion settled by punchayets.

Telegram from Honourable D. F. CARMICHAEL, Madras, to the Honourable T. C. HOPE, Legislative Member of Council, Calcutta,—dated the 10th March 1879. No. 58.

Cannot give further information. India statistical forms ignore enumeration of values between five and twenty rupees. Punchayets also ignored.

Demi-official from the Honourable D. F. CARMICHAEL to the Honourable T. C. HOPE,—dated Madras, the 12th March 1879. No. 59.

I have received your telegram and reply to it. I now reply to your letter of 6th.

Of village punchayets our statistics make no mention since 1868, as in 1869 the new forms of India came into use; these forms ignore punchayets. But I find that the average* number of suits filed before village punchayets for the five years ending with 1868 is 420.

* Average value unknown.

As to suits above and below rupees ten, India statistics require information, thus :—

R
(1) 5 and under.
(2) 20 ditto.
(3) 100 ditto.

Under No. (2) would fall all between anything over rupees five and anything not over rupees twenty. How many of these are above rupees ten we do not know.

I can give you the returns for (1), (2), and 3 for 1877, *viz.*:—

R	
5 and under	23,554
20 ditto	19,530
100 ditto	322
Unknown value	500

There are no reports on the working of the village judicatories. Sir T. Munro observed that the number of suits filed before them would be enough to show how far the people gave them the preference; and that after settling the case, the potail should never be troubled further about the matter. Either party, of course, may proceed against him for corruption, but I never heard of such a prosecution. Certainly it is very uncommon.

The *district* punchayet (Regulation VII of 1816) was knocked on the head by Act III of 1873, which I think is to be regretted. I should be very glad to see juries summoned in certain civil cases much on the system prevailing in English country courts—see 9 and 10 Vict., Cap. 95 and 70.

No. 60. Demi-official from the Honourable D. FITZPATRICK, to the Honourable T. C. HOPE.

I send you herewith the Codes Français. You will find that there are two sorts of conciliations, one of which is commonly known as "conciliation à l'audience," and the other as "conciliation en dehors de l'audience," or "conciliation sur lettres." The former, which dates from the foundation of the present French judicial system, you will find treated of at pages 334-7; the latter, which, to the best of my recollection, was established only about the year 1835, when there was some extension of the powers of the *juges de paix*, you will find provided for at page 1621. The principle of both is of course the same, but the procedure is somewhat different. In the exercise of the former jurisdiction the *juge de paix* conciliates parties in cases which it would be beyond his jurisdiction (competence) to try; in the exercise of the latter parties in cases which, if they are allowed to proceed, would come before himself.

2. I took some pains to learn a little of the system when I was living for a short time in Paris in 1872, and I came to the conclusion that it would be well worth trying in a few districts* in India. You will find† at pages 42 to 44 of the note book I send herewith the statistics of the conciliation system for the year 1869.

* The great blunder we constantly make in introducing any thing new in this country is that we introduce it everywhere at once.

† At Mr. Hope's request I have now made an abstract of these statistics and appended it to this letter.

3. These figures taken without explanation would, of course, show a most marvellous success; taking the figures, *e.g.*, for *conciliation sur lettres* in the "mofussil," we find the issue of the letter leads in 50 per cent. of the cases to a settlement out of Court, and in nearly 75 per cent. of the other 50 per cent. to a conciliation before the *juge de paix*; but these figures, like all others, must be taken *cum grano*, and the truth is that in a very large proportion of the cases in which letters are issued there is really no dispute at all, and the letter is applied for by the creditor merely to put some gentle pressure on his debtor.

4. I found so much difference of opinion among the people about the Courts as to how large the proportion of the real genuine conciliations was, that I set about investigating the thing for myself by examining the judicial statistics from 1838 down, and you will find the figures in detail further on in my note-book.

I got to no very definite result, but was satisfied that, after making full allowance for the cases in which the letter was merely used as a whip, the conciliation had very largely reduced the number of contested cases.

5. An old *juge de paix*, whose acquaintance I made, told me that he thought he managed to settle one-fourth of the actually contested cases, and this was in Paris where, owing to his knowing little of the litigants, he had not anything like the chance of succeeding that a Judge in a rural district would have.

I sat occasionally with this old gentleman to see the conciliation *sur lettres*, and it seemed to me that he succeeded in a large number of cases in settling the dispute.

6. The Judge (in this sort of conciliation) sits with closed doors, the parties come in, and he coaxes them and bullies them alternately. If the creditor is very obdurate, he (the Judge) would sometimes say—"All right, I postpone the matter; come again this day week and then we'll see."

7. This power, especially when exercised "in Camera," you will see is liable to be abused; and I remember one case in which my old friend seemed to me to make a flagrant abuse of this power of adjournment. A tradesman had a claim against a gentleman for fitting some stained glass, and the gentleman objected to the charges as too high. The Judge tried to bully the tradesman into reducing the charges, but to no purpose. At last the tradesman lost all control of himself and said—"You are denying me justice; this is the third time you

have had me up here and refused me permission to sue." The Judge simply smiled and postponed the matter again to the following week. The gentleman evidently was prepared to find the Judge take his part, for he said nothing throughout. When the parties left the room the Judge turned to me and said—"That gentleman is a friend of mine, and I am sure the man is overcharging him."*

* Since writing this, I have come across a note of another similar case of which a gentleman on whose word I could rely gave me an account.

8. If we tried the system in India, I think, to avoid this sort of thing, the conciliation should be public, and I would appoint to work it men who know the people thoroughly, and who would sit at the very doors of the parties with all the neighbours about. If the experiment was to be tried in the part of the country I know, I would appoint men of the people—zaildars, and such like.

9. This is the sort of men that, according to the ideas of those who established the system in France, should be employed.

"Dans le Systéme Nouveau de la Constituante," Troplong says, "la société par l'organe *d'um homme simple et dèsarmé de tout pouvoir,* intervient pour faire entendre le language d'une bienveillance éclairée d'une équité conciliante, le conseil désinteressé des sacrifices réciproques."

10. It might be a question whether one man should sit alone, or whether you would not have a list from which each party might select one, the two men so selected sitting together as a Bench, and calling in a third if they could not agree in giving or refusing the *permis de citer.*

11. I don't think any official sitting in a regular court-house at a distence from the parties' home would, at least in the part of the country I know, effect much. The parties would be completely at arm's length before him, and would not listen to reason. If anything is to be done, it must be by bringing the disputants, at an early stage of their quarrel, before the natural heads of their own little society, that is to say, before the very persons to whose mediation they would have appealed in the days when there were no regular civil courts in the country, and to whose mediation, I believe, they would of their own accord again begin to appeal if we were out of the place to-morrow.

The statistics of conciliation for the year 1869, referred to above (paragraph 2), are as follows :—

Conciliation à l'audience.

	France generally.	Paris.
Citations issued	62,902	6,314
Cases in which (apparently owing to a settlement out of court) there has been no appearance	13,361	1,851
Balance in which parties appeared for conciliation	49,541	4,463
Cases in which the process of conciliation succeeded	20,311 (40·9 per cent.)	1,337 (29·9 per cent.)
Balance in which the process failed	29,230 (59·0 per cent.)	3,126 (70·0 per cent.)

Conciliation sur lettres.

	France generally.	Paris.
1. Letters issued	3,738,543	159,717
2. Cases in which (owing apparently to settlement out of court) there has been no appearance	1,676,838	92,191
3. Balance in which parties appeared	2,061,705	67,526
4. Cases in which this process of conciliation has succeeded	1,466,501 (71·1 per cent.)	37,520 (55·5 per cent.)
5. Balance in which it failed	595,204 (28·8 per cent.)	30,006 (44·4 per cent.)

N.B.—I do not vouch for the precise accuracy of all the figures on the above tables, because I, in some instances, took down numbers and in some percentages from the reports, and I have had to reduce them all to a common system to fit them in. The last figure, 30,006

ought perhaps to be 26,538, that is, the figure in the report; but it would seem to be erroneous, as it won't add up to balance.

With these trifling exceptions the figures may be relied on, for I went into the matter with great care.

No. 61. *Explanatory Note no the draft Bill for the Relief of Indebted Agriculturists in certain parts of the Presidency of Bombay.*

Scope of this note.

1. This Bill was received from the Government of Bombay with their Chief Secretary's letter No. 2056 of April 18th, 1879, and was accompanied by a Minute by His Excellency Sir Richard Temple, dated the 14th idem. That letter and Minute contain full and sufficient explanations regarding some of the leading principles of the Bill which have been more recently under discussion. The object of the present note is not in any way to supersede those explanations, but to provide for facility of reference and consideration by the Government of India, a running commentary on all the salient provisions of the Bill, explaining, as briefly as may be, their object, scope and necessity, and stating the arguments, or quoting the authorities, by which they are respectively supported. Where alternative courses lay open, it may sometimes be necessary to set forth the merits or defects of each, but, as a rule, controversy will be avoided.

Secretary of State's instructions.

2. The Bill proposes to meet the instructions contained in the despatches of the Secretary of State, Nos. 4 and 63 of the 26th of December last, to the effect that the Bills in progress in the Legislative Councils of India and Bombay should be without loss of time superseded by one "comprehensive measure," which shall (1) provide courts more accessible, more absolute, less technical, less dilatory and less expensive than the present ones; and (2) mitigate "the extreme severity of the law on debtors" and extend the powers of Judges "to modify the contracts entered into between man and man." I now proceed to comment on it in detail.

PART I.—*Preliminary.*

Extension to other parts of Bombay Presidency.

3. The power of extension to other parts of the Presidency with previous sanction of the Governor General in Council, has been inserted in Section 1, in accordance with the consent given in paragraph 13 of the Government of India's letter No. 696 of November 27th, 1878.

PART II.—*Of the Civil Courts.*

Additional judicial facilities.

4. In order to meet the Secretary of State's requirements as to the courts, the Bill makes four principal provisions:

A.—Subordinate Judges—

(1) all are vested with Small Cause Court powers:

(2) those powers are enlarged so as to include certain classes of cases in which agriculturists are concerned:

(3) the Small Cause Court procedure is considerably simplified.

N. B.—The number of Subordinate Judges is also to be increased by one-half, but this does not appear in the Bill, being an executive matter.

B.—Village Munsifs—

(4) a discretion of appointing these, wherever it thinks fit, is given to the Local Government:

(5) a Village Munsif will have jurisdiction in suits for money up to the value of R10, and his procedure will be simple.

N. B.—This provision being merely permissive, the Government will executively act on it only where a competent individual can be found.

C.—Conciliation Judges—

(6) a discretion of appointing these, wherever it thinks fit, is given to the Local Government:

(7) no dispute as to any matter in which one of the parties is an agriculturist will be cognizable by a civil court, unless the plaintiff produces a certificate that the Conciliation Judge has failed to bring about an amicable settlement.

N. B.—Though the provision is permissive, the exaction of the certificate from plaintiffs will, in practice, necessitate the appointment of a reasonably sufficient number of Conciliation Judges.

D.—Legal Practitioners—

(8) these are to be excluded from appearing before Village Munsifs and Conciliation Judges in any case, and also, except with special permission, before subordinate Judges in cases not exceeding R100 in value:

(9) where a legal practitioner is so permitted to appear for a creditor, and the debtor is a pauper, the court may direct the Government Pleader, or other fit person to defend him.

These provisions will be noticed more fully under this, or subsequent parts of the Bill, as they occur in order.

Nature of agriculturists' cases.

5. The cases in which agriculturists are mostly concerned (which I will term "ryots' cases"), and for which the present legislation is to provide, are of a somewhat peculiar nature. On the one hand, they come under only one of the four heads under which suits congizable by Small Causes Courts are classed (Act XI, 1865, Section 6). On the other, they embrace suits between mortgagors and mortgagees for the foreclosure and redemption of mortgages, or for the possession of profits of the land mortgaged where such mortgagors are agriculturists, and also suits by agriculturists, for an account.

Two modes of providing for them.

6. Two modes of making provision for these ryots' cases lie open. The additional court to be constituted (the necessity for them is admitted) may be invested with a jurisdiction and special simple procedure in these cases only, and all existing courts may be invested with the same. Or, again, the existing subordinate courts may be increased in number, and the Small Cause Court powers, which (in practice) only some* of them possess, may be given to all, and extended to include mortgage and account suits. In the former case no existing procedure would be interfered with and the newness and distinctness of the provision might give confidence and popularity. In the latter, agriculturists would get for their special cases the same provision as in the former, but they and the general population would obtain increased facilities for civil suits and small causes other than those special to agriculturists. Considering the disadvantages of class legislation, and the advantages to the people of the increased facilities referred to, the second mode of dealing with the question has been adopted in Section 4 of the Bill.

* In the four districts only eight out of twenty-six have them.

Amount of jurisdiction of Subordinate Judges.

7. Under the Bombay Civil Courts Act (XIV, 1869, Section 28) Subordinate Judges invested with Small Cause Court jurisdiction may, if of the first class (pay R800, R650 or R500) try suits up to R500 in value, but if of the second class (pay R400, R300 and R200) only up to R50. For such a wide difference there appears to be no sufficient reason, and it becomes inconvenient in the extreme when applied to ryots' cases. The average value of these we have no means of ascertaining precisely. From the Deccan Riots' Commission Report it would seem that out of all the suits of all kinds in Subordinate Judges' Courts, about 85 per cent. were for money and for sums under R500; and, further, that of these about three-fourths were for less than R100, and nearly two-thirds for less than R50. Again, according to the Administration Report for 1877-78, 36 per cent. of the suits under R100 were for less than R20, and the Secretary to the Poona Arbitration Court lately deposed before the Famine Commission that one-sixth of all claims are for less than R10. In Madras the proportion of small suits is much larger. Considering that the object in view is to prevent the people being taken far from their homes, and that the amount claimed is, owing to false bonds and one cause or another, habitually above the sum really due or likely to be awarded under the new system, R100 appears to be the lowest limit which can be usefully fixed as the jurisdiction of second class Subordinate Judges. With so much, the Government of Bombay consider that they may be safely and advantageously entrusted. Section 4 provides accordingly. Wherever the Subordinate Judge does not happen to be of the

No. 2056, April 18th, 1879, paragraph 7.

first class, cases for above R100 will probably have to go under the old regular court procedure.

Village Munsifs' jurisdiction.

8. The correspondence with the Honourable D. Carmichael, Member of Council at Madras, which is annexed to my letter to the Secretary to the Government of India in the Home Department dated the 26th ultimo, shew that the Madras Village Munsifs' system, constituted under Madras Regulation IV of 1816 is well worthy of attention. It is a remarkable fact that the Munsifs dispose of nearly one-fourth of the whole civil litigation of the Presidency. In other words, some 45,000 suits, for which the people in Bombay might be dragged to our regular courts with all their attendant delay, cost, and harshness, are in Madras quietly disposed of at the people's own homes without any one of these evils. Nearly the whole of these are for sums not exceeding R20, and nearly half for R5 and under. The returns do not show how many of them are for R10 and under, and therefore tried without the consent of both parties, which is necessary for suits above that limit and up to R100. It has been surmised that many of the disputes here dignified by the name of suits are so petty that in Bombay they are never brought to a regular court at all; but the general statistics do not bear this out, as in the Bombay mofussil in 1877 there were 144,412 suits to a population of 15½ millions, while in Madras there were only 190,290 to above 31 millions. Again, Mr. Carmichael says that the bulk of them are not between usurers and ryots. But the fact remains that a very inferior agency can dispose successfully without appeal of suits not lower in value, though differing somewhat in nature from those with which we have to deal.

9. Although, however, Village Munsifs may thus be a fairly efficient institution in Madras, where they are a survival of ancient times, and where society is still in a comparatively simple state, it would be impossible at the present day to constitute them by law throughout all villages or village circles in our Deccan districts. The people are now too independent, too active minded, too irreverent to accept implicitly the decision of village seniors as such, or, as the Native newspaper forwarded to me with the Government of India letter No. 223 of February puts it, "in the present times of freedom and liberty, when even children do not obey their parents, the village headmen have no authority and influence." Even if we in Bombay could successfully impose on our hard-worked and ill-paid patels this, to them, novel function, there is the further difficulty in their case that the bulk of our petty suits are brought by money-lenders, with whom the patel would too often be, by want of education or by absolute interest, unqualified to cope. Our advanced conditions postulate a more skilled judicature, better Judges, and consequently fewer of them, and these the Government must in the main provide. At the same time there can be no harm in taking advantage of the present opportunity to give the Government power to invest with petty jurisdiction up to R10 any individuals whether village patels or not, whom it may here and there find to be qualified by education and character. Section 5 gives this power accordingly.

(See also Bombay letter No. 2056, April 18th 1879, paragraph 11, and Governor's Minute, page 5.)

Safeguards against abuse of summary jurisdiction.

10. The question of how far summary jurisdiction, not open to appeal, may safely be entrusted to the various courts, has received careful consideration in connection with the observations in paragraphs 14 and 15 of the Government of India's letter No. 222 of February 20th, 1879, and the following opinion of the Secretary of State: "I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all Civil Judges in the Deccan with great benefit." It is considered that such jurisdiction may be conferred on all the courts up to the full limit with which they may respectively deal, and Section 30 is framed accordingly. But three special safeguards have been provided.

Despatch No. 4, December 26th, 1878, paragraph 33.

Bombay No. 2056, April 18th, 1879, page 9.

1st, Inspection.—A special Assistant Judge, or Subordinate Judge, will be appointed (Section 7), who will, during the greater part of the year, be engaged in travelling about, inspecting and supervising all subordinate courts. In Bombay the Collector and his assistants similarly move about, inspecting and controlling the revenue administration, mixing with the people, and, in particular, examining the civil work done by mamlatdars. Long experience has proved that the system produces excellent results.

2nd, Revision.—The power of revision, vested in the High Court by Section 622 of the Code of Civil Procedure, is extended (Section 32), on the analogy of Section 295 of the Code of Criminal Procedure, to the District Judge, who will be enabled to call for and examine the record of any case and correct failures of justice as also similarly to deal with cases called for and referred to him, by the Inspecting Officer above referred to.

3rd, Sitting "in banco."—The District Jugge and the Inspecting Officer with his authorization are enabled (Sections 6 and 7) to stay the proceedings in any case pending in a subordinate court, and to sit with one or two other Judges as a Bench to try it. The power of withdrawing a case and trying it himself, or transferring it to another court, which the District Judge possesses under Section 25 of the Code of Civil Procedure, may also, with the Judge's authorization (Section 7), be exercised by the Inspecting Officer. These provisions will both enable important cases to be tried by superior officers or a Bench, and promote that exercise by such officers of their personal example and that enlargement of their practical experience which are thought so desirable by the Secretary of State.

PART III.—*Of Procedure.*

New procedure why required.

11. The reasons which have led to the utilization, for ryots' cases, of the Small Cause Court powers (somewhat extended), in preference to constituting a distinct class of courts, have been stated in paragraph 6. An analogous course with regard to the Small Cause Court procedure has not been found practicable. The provisions of Sections 8 to 20, 30 and 31 will consequently supersede the existing Small Cause Court Procedure almost entirely. The grounds for his course are briefly stated in paragraph 10 of the Bombay letter No. 2056 of April 18th. The case may be put thus :

(*a*) Considerable modification of the Small Cause Court Schedule appended to the Code of Civil Procedure was inevitable, in order to provide for the mortgage and account suits added to the jurisdiction *supra,* paragraphs 5 and 6).

(*b*) The existing Small Cause Court procedure is to a great extent that of the Code which is generally condemned as being too intricate, costly and dilatory for at least the cases with which it is now the object to deal.

(*c*) To provide a new procedure modified as thus required for ryots' cases only would give the Judges a third law to learn and apply without any commensurate advantage.

(*d*) The application of the new procedure to *all* Small Causes, as proposed, beside being thus a material relief to the Judges, is a benefit which there is no good reason for refusing to suitors other than ryots.

In short, considerable alterations in the existing procedure being unavoidable, it was simpler to revise the whole than to make fresh patch-work ; and there seemed no harm in letting parties other than ryots share in the conveniences designed for the latter.

The new procedure for Subordinate Judges.

12. As an example of how far a simplification of the procedure of Subordinate Judges is practicable, we have the Bombay Mamlatdars Courts Act (Bombay III of 1876) which in its present and previous form (Bombay V. of 1864) has been in successful operation for about five and twenty years. Sections 8 to 19 of the Bill are, in a great measure, borrowed from his source. The chief points of improvement aimed at are—

(*a*) simplification of the plaint, its amendment and verification, and of the summoning of witnesses ;

(*b*) prompt hearing and disposal of the case ;

(*c*) simplicity of record.

Section 20 enumerates the sections of the Code of Civil Procedure (as Schedule II of that Code did) which will alone apply, and thus adds a formidable list of minutiæ, unavoidable, no doubt, under an advanced judicial system, but probably for the most part of rare application.

13. One point requires special mention. The proportion of cases decided *ex parte* in Bombay much exceeds that in any other Province though it varies considerably in different years. This is ascribed to a variety of causes, of which the chief probably are—(1) ignorance of the ryot that he has a good defence ; (2) want of means to pay a pleader ; (3) conviction that the Court, for want of time or other reasons, will not go into the merits of his case or look behind the bond ; (4) fear of irritating his creditor by a defence ; or (5) fraudulent non-service of summons. The various

Doc. R. R., page 78, and App. B., page 97.

PROVINCE.	Percentage, 1873.	Percentage, 1877.
Bombay .	66	47
Madras .	25	26
N. W. Provinces	22	20
Bengal .	20	37
Punjab .	7	8
Oudh .	7	14

provisions of the present Bill, however, completely alter the conditions of the case. The obligation laid on the court of going behind the bond and into the whole merits of the case will remove the first three of the above causes of backwardness on the ryot's part, and will probably lead to his more frequent voluntary appearance. But that obligation can scarcely ever be successfully performed in his absence and without his help, and it is therefore considered indispensable to make it incumbent on the court (Section 15) to exercise, in all cases of a defendant's non-appearance, the power it now is believed to possess discretionally (Civil Procedure Code, Section 66) of compelling him to attend. Compulsory attendance would meet the other two causes of absence above-mentioned. Any hardship which it might be supposed to involve will be more than balanced by the consequent better hearing of the case, and will, moreover, be much lessened by the proposed bringing of the court nearer to the debtor's home.

Bombay No. 2056, April 18th, 1879, paragraph 11, and Governor's Minute, page 5.

Procedure for village munsifs.

14. Sections 21 to 28 embody such provisions chiefly drawn from the Madras Regulation IV of 1816, as appear to suffice, in connection with the existing law, for the safe exercise of the petty jurisdiction conferred. As compared with Madras Village Munsifs, the Bombay ones may have rather less writing to do, but they will have less authority. They will not have the jurisdiction *by consent of parties* up to R100 in value; they will have nothing to do with the execution of their own decrees, and they will be in all respects (*e. g.*, revision, stay and transfer of suits, and inspection) subordinate to the District Judge and his Inspecting Officer, instead of being liable to him only for "corruption or gross partiality," or "any oppressive and unwarranted act of authority."

15. It is assumed that the immunity from court fees (Act VII. of 1870, Section 19, Clause V) which has always applied to plaints in Village Munsifs' suits in Madras, will be executively extended to their counterparts in Bombay.

PART IV.—*of Suits and other proceedings to which agriculturists are parties.*

Question of the court going behind the bond.

16. Sections 33 and 34 of the Bill correspond in their object, though not in their phraseology, with Sections 4 and 5 of the original draft Bill, which accompanied the Bombay letter No. 308 of January 8th, 1878. Section 35 is merely subsidiary. Section 36 depends primarily on 33 and 34, though its details have also special aspects which will be noticed presently (para. 26).

17. The object of these sections (excluding the point of ancestral debt) is that described by the Secretary of State :—

Despatch No. 4, December 26th, 1878, paragraph 6.

That the Court should be obliged to enter into the merits of every money-claim, whether secured by bond or not, and should award only such sums whether for principal or interest, as they deemed just, and should in no case give compound interest, or larger amount of interest than the principal sum.

18. The requirement of thus "going behind the bond" has been held, in various quarters of not inconsiderable authority, to be in accordance with sound general principles of equity.

Sir Arthur Hobhouse, in a Note on the execution sale of land, dated 28th April 1874, when alluding to some remarks by "a man like Sir John Strachey, who treats the subject with equal sobriety and ability," continues—

"Correspondence on Law of Land-sale" (Home Department), page 412.

From my point of view I say that if what he has said, or the major part of it, be now true, it can only be met by a large increase of correctional power over contracts, to be vested in judicial tribunals and strengthened by a usury law. In our own country the courts of equity invented laws for the protection, not only of persons of weak character and immature age, but of expectant heirs, of reversioners ; in fact, of all persons placed under temptation to make improvident bargains. When they came across the usury laws they made them subject to the more sweeping law created by themselves, and moulded them so as to produce fairly reasonable, though not very legal, results. They laid hold of mortgages, under which the mortgagee became absolute owner if the debts were not paid by a certain day, and declared that the parties did not mean what they had said, but that, notwithstanding the absolute forfeiture, there remained an equity of redemption in the mortgagor * * * I do believe that sensible Judges, armed with a large power of moulding improvident bargains, and strengthened by a usury law in the back-ground, may administer more than a trifling palliative.

Sir George Wingate writes thus :

Dec. R. App. A., page 86.

It remains to be shewn how it is that the creditor in our Provinces has acquired a degree of power over his debtor, which is wholly unknown in Native States. This power, it is clear to me, has been conferred by our laws, which enable the creditor to obtain a decree against a debtor for whatever may be written in his bound and enforcement of that decree by the attachment and sale of whatever property, moveable or immoveable, his

debtor may possess or acquire. * * * The first remedy I have to suggest is as follows: * * the enactment of a law to permit the court to decree in all cases, on equitable consideration, whatever rate of interest it may deem proper, but that in no case shall the total amount of interest exceed the principal, and that the court shall also in all cases be at liberty to fix the amount of the principal on equitable consideration with reference to the amount which it may consider to have been actually received by the debtor, and irrespective of the sum entered in the bond or acknowledgment of the debt. Dec. R. App. A., page 90.

Mr. Pedder, of the Bombay Civil Service, who has given great attention for some years to the problem of agriculturists' indebtedness, has given the following opinions :

A bond should not be considered sufficient proof of a debt unless its antecedents will bear the light, and show that the consideration for which it was passed was a fair as well as an actual one. The passing of a bond by a native of India is often of no more value as proof of a debt he thereby acknowledges than the confession by a man under torture of the crime he is charged with. "Usurers and Ryots," page 10.

It appears to me that some limitation of the rate of interest, and some restriction on grossly unfair stipulations in contracts, as contrary to justice and public policy, are practicable and expedient. Dec. R. App. A., page 137.

Lastly, Lord Cranbrook, besides confirming the sanction given by Lord Salisbury to the introduction of the Bombay Draft Bill, containing provisions on the principle above referred to, appears to look with approval on "extending the powers of Judges to modify the contracts entered into between man and man." Despatch No. 4, December 26th, 1887, paragraph 17.

19. These provisions have led to considerable correspondence between the Governments of India and Bombay, which may be said to have dealt partly with the general principle, and partly with the extent to which its exposition was needed in the contemplated legislation.

20. Admitting, in the main, the soundness of the general principle, the Government of India were of opinion that the existing law (Regulation V, 1827, Section 9), together with certain rulings of the superior courts, fully empowered the mofussil Judges to go behind a bond and award only the amount of consideration actually received, as also, in the case of a Hindu, no more interest than double the principle. So far, therefore, it was held that legislation was unnecessary, though a circular from the High Court, calling the attention of subordinate courts to the matter, might be desirable. But any legislation, transferring to the plaintiff the burden of proof of actual payment of consideration and absence of fraud, was thought inexpedient, as burdensome to the courts, unfair to the creditor, demoralising to the debtor, and repugnant to Section 102 of the Evidence Act. Bombay No. 308, January 19th 1878, paragraph 6 (a). India No. 404, July 1st, 1878, paragraphs 8 to 10. Bombay No. 4579, September 5th, 1878, paragraphs 4 to 8, and Sir R. Temple's Minute, August 30th. India No. 696, November 27th, 1887.

21. The Government of Bombay, on the other hand, feel that, whatever the law as gathered from scattered rulings may be, its "uncertainty is such that the courts practically do not go, can hardly be expected to go, and for the most part are sure not to go, behind the bond." Of the rulings themselves, those of Bengal have no authority in Bombay, and those on Bombay, obscure as they are, tend in practice only to make absolute the provision in Regulation V, 1827,* which is virtually one chief source of the evils exposed by the Commission. A circular by the Bombay High Court would, therefore, be of little use, even if that court would issue one, which it would certainly refuse to do, in accordance with the principle it has long since established of abstaining from extra-judicial decisions. Neither existing law, nor rulings, nor circular seem to the Bombay Government to meet the grave social and political condition of affairs in the Deccan, as first disclosed in the Report of the Commission, and as now existing after four years further action of the civil courts and the aggravation of a severe famine. They know that— Sir R. Temple's Minute, August 30th, 1878, paragraph 13.

*"*Section IX., clause* 1.—Written acknowledgments of debt in any shape shall not be held conclusive in a court of law as to the amount, if the defendant show that a full consideration has not been received."

At every stage of his money-dealing the ryot is defrauded by the sowcar, and especially by the low class of sowcars which has sprung up in the last generation. It may be taken as proved that the latter often declines to give accounts, refuses receipts, omits to give credit for payments or interest on payments, and declines to carry out his own stipulations in the bond. Actual forgery, moreover, is sometimes resorted to, and the ryot from ignorance, is unable to prevent his creditor from taking advantage of these nefarious practices. Bombay No. 2202, April 6th, 1877, paragraph 6.

Under these circumstances they attach small value to the terms of bonds, or to the rules applied to ordinary cases of contract in highly civilised communities where all the members meet on equal terms; they consider that the *primâ facie* equitable presumption is, in nine cases out of ten, against the plaintiff, and they accordingly think it only right "to cast upon such creditors the burden of proving such claims to be just, even if undefended." Sir R. Temple's Minute, August 30th, 1878, paragraph 17.

22. Having stated officially my general concurrence in the Bill submitted by the Bombay Government, it is perhaps no more than my duty to express a definite opinion upon so important a point in it as the present.

23. It will not, I presume, be disputed that (as remarked by Sir John Strachey twenty years ago)— Dec. R. App A, page 187.

No one who has not had the matter brought practically and directly to his notice can have the least conception of the knavery and rapacity of the money-lenders. * * *

The conditions depend far more upon the degree of simplicity in the borrower and of rapacity in the lender, than on anything else. Our civil courts have unhappily been the ready instruments for these hishonest operations, and our system of judicial procedure instead of checking has stimulated and exaggerated them.

That the sowkars obtain bonds on false pretences, enter in them sums larger than agreed upon, deduct extortionate premiums, give no receipts for payments and then deny them, credit produce at fraudulent prices, retain liquidated bonds and sue on them, use threats and warrants of imprisonment to extort fresh bonds for sums not advanced, and commit a score of other rogueries;—these are facts proved by evidence so overwhelming that I scarcely know whose to quote out of the five volumes composing the Report of the Deccan Ryots Commission. Upon the inability of the ignorant and impoverished ryot to contend with the sowcar, armed with money and all the weapons, which the law provides, I need not enlarge.

See "Famine and Debt in India," by Mr. Pedder, in "The Nineteenth Century," September 1877.

24. Under such conditions, and going upon the broad principle that the object of civil justice is to reach the bottom of that well where Truth resides, and that all legal rules are but tools in its hands to this end, a rigid law, obliging a defendant to prove that he did *not* receive the consideration named in a bond, must but too often produce a mockery of justice. Section 102 of the Evidence Act may frequently be counterbalanced by Sections 14 to 19 of the Contract Act: the relation and condition of the parties may be such as to render an intelligent and free written contract between them an impossibility. The debtor will ordinarily belong to the class who need the protection of the law against themselves, and to whom, as Sir Arthur Hobhouse shews, it has in England been justly extended. Of the manner in which our Government, a few years ago, deemed it necessary to protect them, we have a striking instance in the second clause (still unrepealed) of the very Section (9) of the Bombay Regulation (V of 1827) which is now the cause of difficulty. It runs thus:

Clause 2.—And in the case of a cultivator of the soil, sued upon a written acknowledgment executed at a place which was not at the time of such execution under British jurisdiction, if the circumstances are such as to convince the court that the creditor might reasonably be expected to possess other proof of the amount besides such written acknowledgment (the consideration received for the same being contested), then the said writing shall not be held conclusive as to the amount, whether the defendant prove a deficiency in the consideration or not, but the court shall pass a decree for only such amount as the claimant may otherwise prove to be due.

The law which preceded it, Regulation I of 1823, was even more explicit.

Section 36.—Whenever a cultivator of the soil is sued upon an acknowledgment in writing executed by him, before the territory where it was executed came into the possession of the British Government, it shall be competent for him to plead that he did not receive a full consideration for the same, whereupon the plaintiff shall be required to prove his debt, in the same manner as if no acknowledgment had been executed, and such sum only as in the circumstances of the case is just and equitable shall be allowed in the decree.

Preamble, Reg. I., 1823.

The wisdom of our early Legislators in thus dealing with the facts around them was greater than their foresight, which led them to hope that with the planting of the British flag and the establishment of "a regular system for administering justice," the causes would pass away by which "cultivators were easily induced to grant written obligations for larger sums than were due."

25. What the Bombay Government substantially advocate, and what we really need, is something approaching to a restoration of this early law. The court should set itself to do substantial justice in every case which came before it, instead of being satisfied with the letter of a bond, or the bald assertions of either party, and it should of its own motion make such inquiry as it found necessary to this end. On the one hand a simple denial of consideration should not throw the burden of proof on the plaintiff, but, on the other, if the circumstances were such that he ought to have clear accounts and evidence, and he failed to produce them voluntarily or on the court's requisition, the court would draw its own conclusions against him accordingly. If he did not come into court with clean hands, he would be entitled to little consideration. The court should not go further in any case or against either side than sufficed to get at the truth of the matter or to give an equitable decision on general considerations. But unless the duty of the court be clearly expressed in the law, press of work, indolence, or a desire to get through cases rapidly, will as hitherto, tend to prevent its performance. There appears no reason to fear that such an exercise of its discretion by the court would be either unfair to the creditor or demoralizing to the debtor. If it be conceded, as I trust that on the urgent representations of the Bombay Government and the approval of the Secretary of State it will be, that a legislative provision is necessary then the difficulty is reduced to one of mere drafting. Possibly the form first proposed that the court in all cases "*shall require the plaintiff to prove*," etc., was as much too rigid on the one side as the existing phraseology "*if the defendant shows that a full consideration has not been received*," is so on the other. Sections 33 and 34 are a re-casting

Section 4 of draft with Bombay Bombay No. 308, January 19th, 1878.

designed to express more unobjectionably the real intention. If the allusions to the Evidence Act in the former be too bald, perhaps a clause more nearly following the Regulations quoted in paragraph 24 might be substituted for it.

Allowance of only reasonable interest.

26. Sections 36 and 42 are taken, almost as they stood, from the Bill introduced into the Bombay Legislative Council on September 13th, 1878, in accordance with the sanction of the Government of India. They relate to the power of the court to regulate interest, and rest upon the same general principle as the authorization of the court to go behind the bond and determine the principal of the debt. To deny the latter power seems scarcely consistent with a concession of the former, and either without the other would be of little use. Upon some of the clauses of Section 36 the following remarks may be of use:

Bombay Government Gazette, Part V., page 89.
India No. 404, July 1st, 1878, paragraph 11.
Bombay No. 4579, September 5th, 1878, paragraphs 9 to 15.

Clause (c).—Mr. Justice West remarks—"Compound interest should be disallowed, consistent, as it is, with sound commercial principles, in order to make it a disadvantage to creditors to leave obligations unsettled until the debtors are involved beyond redemption."

"The Land and the Law," p. 14.

Clause (*d*)—*Dam-dupat.*—The definite maintenance of this rule for Hindus, which now rests in Western India upon rulings alone, is advocated by numerous authorities. The Bill applies it to all races on the general principle of equity.

Bombay No. 4579, September 5th, 1878, paragraph 11.
Dec. R. App. B., page 360.

Clause (*e*), *Ancestral debt.*—The provision here made differs considerably from those in Bombay Act VII, 1866, in that it affords to Hindus a means of escape from enormous claims for interest on old debts. It also extends the limited provision to all agriculturists, whether Hindus or not. Section 42 makes all the ancestral debt provisions applicable to applications for execution of decrees.

Suits for an account.

27. Section 37 enables a ryot to sue for an account, and to obtain the settlement of the same under the principles applicable to suits. The papers contain abundant proof that creditors often refuse to let their debtors know how their account stands in order to get them more deeply involved.

Dec. R. Rep. p. 97, etc.

Part payment and discharge.

28. Section 38 is a natural consequence of the method in which it is proposed to deal with insolvency which will be explained further on. Here I will merely say that there are numberless petty cases in which the means of the debtor, the claims against him, and his partial or total inability to satisfy them, come before the court in the course of the hearing of his case. Where this is so, it is far shorter, simpler, and less troublesome to all parties to empower the court at once to settle the matter than to let it go on through the perfectly useless, but costly and vexatious, forms of taking out execution, and applying for declaration of insolvency. Where the case was quite simple, the court would release the debtor from any balance which it was satisfied he could never pay. When there were several creditors, or other complications, and the amount exceeded R50, it would at once direct the taking of insolvency proceedings.

Again, the court will be able to act as above, not only when it has just heard a case and passed a decree, but also when an old decree whether already partially executed or not, comes before it for execution, and it sees cause to enquire at once into the debtor's circumstances. It will be noticed that the whole section is merely permissive.

Payment by instalments.

29. Section 39 is the first expression of a principle which is introduced prominently into the insolvency portion of the Bill, and will be explained further on. It is simply this: that we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in recovering all that is justly due to him and reasonably recoverable. It is frequently stated in the papers before us that a creditor's difficulties begin when he has got his decree. Such difficulties should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle the destruction of the ryot's credit or his bondage, to secret and extortionate agreements of sale of his property must ensue, and all our well-intentioned interference will do harm instead of good. With a cheap, speedy, and equitable mode of recovery, interest ought not to exceed from 9 to 12 per cent. This section accordingly allows the court to use the Collector for the recovery of any instalments it may fix. But a limit of seven years is provided. This limit has been fixed after careful consideration, and in view of the various proposals which have been made for the temporary transfer of land in lieu of its sale. If a man's debts are so heavy that he cannot pay them in this time, it is better that he should be declared an insolvent, and get a final discharge for the balance, than that he should drag on as a slave, without hope of amelioration or stimulus to exertion.

Corres. on Law of Land Sale, Home Department.

Abolition of arrest and imprisonment for debt.

30. Explanations on this point (Section 40) will be given more appropriately when treating of Part V on insolvency.

Exemption of specifically pledged land from attachment and sale.

Bombay No. 308, January 19th, 1878, Section 6 (c). India No. 404, July 1st, 1878, Sections 14 and 16. Bombay No. 4179, September 5th, 1878, Section 19. India No. 696, November 27th, 1878, Section 11.

31. Section 41 provides for this measure in accordance with the sanction of the Government of India; it consequently needs no explanation beyond that afforded in the correspondence quoted in the margin.

The important general question of the sale of land for debt remains outside the Bill, and upon the footing on which it has been experimentally placed for all India by the new Civil Procedure Code.

PART V.—*Of Insolvency.*

Need for Insolvency Act in mofussil, and measuses adopted.

32. The need for an effective insolvency law for the relief of agricultural debtors has been generally admitted for a long series of years, and has led to various legislative efforts and measures.

Dec. R. App. A., pages 91-8.

(1) Sir George Wingate in 1852 advocated strongly "the enactment of a simple and equitable insolvent law, to enable a debtor hopelessly involved to free himself from all his liabilities within a limited period," and so recently as December 23rd, 1877, he wrote thus: "Of all the remedies proposed, I estimate the Insolvency Act as of the highest importance, and as likely to prove the most efficacious."

Mr. W. E. Frere's Insolvency Bill of 1863, "Objects and Reasons."

(2) Sir Bartle Frere, in 1853, when Commissioner in Sind, issued rules for the relief of insolvent debtors in that Province, which "worked with marked benefit to the whole community"; but the system was superseded by Act VIII of 1859 (the Code of Civil Procedure) which came into force in 1861.

(3) Mr. William Frere, Member of Council at Bombay, introduced into the Legislative Council there, in 1863, a Bill based on these rules and the Insolvent Act of the Presidency town (11 and 12 Vic., c. 21), but applicable to the whole Presidency. Both Rules and Bill bore three distinguishing features —(1) a debtor could apply to be declared an insolvent even though not in jail; (2) a creditor could apply for such a declaration, and (3) a final discharge from future liability could be granted. The Bill was carefully matured in Select Committee, but was eventually withdrawn in 1867 for a variety of reasons, of which the expediency of awaiting the result of contemplated legislation in England was one of the chief.

Reports of Committee, April 6th, 1864, and March 19th, 1866, Proceedings, March 21st, 1866.

Proceedings, August 30th, and November 18th, 1870.

(4) Sir Fitzjames Stephen, in 1870, introduced into the Legislative Council of the Governor General an Insolvency Bill applicable to all India. It was taken almost entirely from the English Bankruptcy Act of 1869, and on circulation to the Local Governments was generally held to be too complicated, and unsuited to the circumstances of the Indian mofussil.

(5) In 1872 Mr. West, Judge of the Sadar Court in Sind, proposed a Bill with the essential features of the original rules of that Province, but the matter was not proceeded with. The measure generally is also advocated in his well-known pamphlet—"The Land and the Law."

(6) The new Code of Civil Procedure, 1877, has so far amended the previous law as to allow a debtor under arrest to obtain a general enquiry into his affairs, a declaration of insolvency, and a release from jail (with immunity from subsequent arrest for the scheduled debts) on *bonâ fide* surrender of all his property. The court is also empowered to grant him a final discharge, relieving subsequently acquired property, if it thinks fit, and if the scheduled debts do not exceed R200.

Disadvantages of present law.

33. Under the present law, however, the following objectionable features remain:

(a). Declaration of insolvency cannot be applied for by a debtor until he is actually under arrest or imprisonment.

(b) Such declaration cannot be obtained by a creditor at all.

(c) Final discharge of a proved insolvent cannot be obtained if the debt exceeds R200. Whatever be the amount of the debt in excess of that, his future earnings remain liable for it for an indefinite time.

(d) The court may not grant a declaration of insolvency, unless it is satisfied that the debtor "has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts." It also may without criminal trial, and "at the instance of any creditor," imprison him for a year for concealment or bad faith.

The first and third of these lead to evils of the first magnitude. Even as amended in 1877, the law is still probably the harshest in the world. Dec. R. App. B., pages 207-44.

Imprisonment for debt.

34. The maintenance of imprisonment for debt, as found in the Indian law, is equally indefensible in principle and in practice. As to principal, the Deccan Riots Committee make clear that point, utilizing the opinions of John Stuart Mill. Their appendices teem with evidence n detail as to the extortion and wrong of which the warrant of arrest becomes in practice the engine. Unacknowledged payments, fresh bonds for sums unadvanced, life-long slavery, and female dishonor may all be obtained, the first three constantly, by the mere production of the warrant of arrest, without enforcement. They say, for instance, that in 1874 "it would seem probable that somewhere about 150,000 warrants had been used as threats only."

Dec. R. Rep., pages 78-82 and 90-92. Dec. R. App. A., pages 16 to 52. Dec. R. App. B., pages 1 to 42 and 126 to 187. Dec. R. App. C. *passim*. Mr. Colvin's Memo., page 32.

35. The outcry against imprisonment, from officers well qualified to judge of it, has been uniform and persistent. Its abolition is unanimously recommended by the Deccan Riots Commission. Judicial officers and pleaders take the same view as the Executive. Mr. Pedder and Miss Nightingale have brought the abuses it causes prominently before the British public. Sir Erskine Perry gives its abolition his "unqualified approval" in a Note dated 1st December 1877. Were it even defensible in theory, which we have seen that it is not, the abuses to which, in a country like Western India at least, it is proved to lead in practice, afford sufficient ground for its condemnation in the districts to which the Bill is to apply.

Dec. R. Rep., pages 112 and 122. Mr. Colvin's Memo., pages 37 and 52-3. Dec. R. App. B., pages 188-205. "The nineteenth Century," Sep. 1877, and Aug. 1878, Poona Sabha's Journal, October 1878.

36. The case has already been laid, though less perfectly and authoritatively than at present, before the Governor General's Council, in the debates on the Civil Procedure Bill. The representations then made had the warm concurrence of Sir Edward Bayley and the learned Advocate General for Bengal (Mr. Paul). The discussions in select Committee, as well as in Council, shewed that the objections to the measure related less to its principle than to the variety of other arrangements, such as an effective insolvency law and a speedy recovery of *boná fide* debts, by which it ought to be accompanied. These the Select Committee and the Council could not see their way to, owing to the insufficiency of the judicial machinery in the mofussil, and the matter may be held to have been deferred rather than negatived. But the present Bill provides all these necessary accompaniments for the districts to which it is to apply. Imprisonment was at best a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. Under the draft Bill it will be quite unnecessary for these purposes. It should be reserved for cases of flagrant fraud r dishonesty, and for these it should be meted out equally to debtor and creditor (see Sections 40, 60 and 61). In this altered position I trust that no hesitation will now be felt in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilised world.

Proceedings, September 21st, 1876, pages 243 and 271; also March 28th and 29th, 1877. Mr. Colvin's Memo., page 53.

Exemption of future earnings.

37. The exemption of future earnings in cases of insolvency not exceeding R200 is a great boon, but this will leave many cases unprovided for, and those the ones involving the most hardship. The distinction between the value of a single suit or decree against a man and the entire amount of his indebtedness must not be overlooked. It is in evidence that money-lenders often keep several decrees hanging over their debtor; that decrees of 1860 are still current; and that cultivators are found indebted on an average up to 15 times the assessment and in some cases 45 times. The Commission say—

Dec. R. App. B., pages 152-155, etc. Dec. R. App. C., page 328. Mr. Colvin's Memo., pages 30-33. Mr. Shambcoprasad's Memo., Part IV. Dec. R Rep., page 88.

The creditors' powers are not exhausted when he has beggared his debtor. We have seen that he can make him his bondslave by the power of imprisonment. If he do not require his labour, and the debtor is allowed to work for another, the creditor can then seize his earnings as fast as they accumulate and without any limitation as to time. * * The effect of all this cannot but be most mischievous. A debtor who is hopelessly insolvent, if he acquires property, does so only for the benefit of the creditor. The incentive to labour is destroyed, and the debtor ceases to be a useful member of society. The fact that all modern laws and most of the ancient ones (*e.g.*, the Roman and Mosaic even) provided some means of relief by which the debtor at some time or other

should be enabled to get free and get the benefit of his earnings, would seem to show that some kind of insolvency law is wanted. The evidence on the subject before us is all one way. None of the reports or opinions approve of making future property, as at present, liable for debt without limit.

I might bring cumulative evidence on this point, but I am reluctant to be tedious. The Bill accordingly allows the court (Sections 58 to 60) to give a complete and final discharge, where advisable, without pecuniary limit, but also encourages the fixing of instalments, and provides facilities and securities for their recovery. These sections correspond in principle with Sections 38 and 39 already explained above (paragraphs 28 and 29).

Bombay No. 4579, September 5th, 1878, Section 17 (1).

38. Upon the other provisions of the chapter I need not enlarge.

A limit higher than R50 (Section 44) would miss a large number of the most deserving cases.

India No. 696, November 27th, 1878, Section 10. Dec. R. App. B., page 222.

Power to a creditor to apply for a declaration of insolvency [Section 44 and *supra* paragraph 33 (*b*)] exists under English law, and was provided in the Sind Rules, and in the draft Bills of 1863, 1866, 1870 and 1872 already alluded to in paragraph 32. It is also allowed in the Punjab by Section 22 of Act IV, 1872. Its chief object is to protect creditors from being unfairly anticipated by each other or by fraudulent debtors, and "to prevent the scramble that now sometimes take place amongst the creditors."

The limitation noticed above in paragraph 33 (*d*) renders the provision for discharge a farce, for when ryots are able to pay "in full" they rarely borrow at all!

Mr. Colvin's Memo., page 35.

The provisions in Section 58 regarding specific properties are to prevent the sale for nominal sums which now habitually occurs.

Finally, the procedure in insolvency has been somewhat simplified, especially by Section 38 (*b*), allowing the court to initiate proceedings.

39. To sum up the insolvency question. The severity of the existing law, aggravated by the penalty of imprisonment and unlimited liability, cannot be denied, nor can the abuses resulting from it in the Deccan. It is proposed to amend it by allowing free institution of insolvency proceedings by either the court, the creditor or the debtor; free discharge where the latter is unable to pay or has paid all that can be reasonably expected of him; but full power to fix instalments for a limited period and to enforce their recovery.

The question must be looked at from the standpoint of India, where fraud by the creditor is the chief danger, and not from that of England, where even the legislation of 1869 has failed through the talents for fraud of the debtor.

See Mr. Pedder's proposals, Dec. R. App. A., page 138. Dec. R. Rep., page 116. Mr. Colvin's Memo., page 44.

The principle on which the draft proceeds is that already referred to, that the creditor should have full and effective help to recover all his just claims that can reasonably be recovered, but that it is useless in the long run to the creditor, oppressive on the debtor, and dangerous to society to enforce a life-long bondage. It is believed that this measure will not injure the ryot's legitimate credit, but improve it. *Bonâ fide* debts should be more easily recovered, and more reasonable interest would thus be profitable. Unlimited borrowing and lending with a view to securing permanent enslavement will no doubt be checked, and so much the better. But above all, a legitimate mode more practicable than any yet suggested will be provided for clearing off the mass of existing debt which now weighs upon the people and stops all improvement. The main difficulty which has of late at least stood in the way of legislation, namely, the inadequacy of the court machinery, has been entirely removed in the case of the Deccan by the determination to increase the number of courts and place them nearer to the people. Under the organisation proposed in the Bill, the courts will be quite strong enough to deal with insolvency, and in a relation to the people better calculated to ensure honest and successful working. The Bombay Government and I myself therefore earnestly hope that no objections will now be felt to the measure. Unless insolvency, as herein proposed, together with the power of going behind the bond, be fully provided, it may be safely predicated that the contemplated legislation will fail to meet the difficulties in the Deccan.

Part VI.—*Of Conciliation Judges.*

Secretary of State, No. 4, December 26th, 1878, paragraph 30. Bombay No. 2056, April 18th, 1879, paragraph 12.

40. The French *juge de paix* has three jurisdictions—

(1) power to try suits up to 100 francs, or say R50;

(2) conciliation *Sur lettres*—a form in which he puts gentle pressure upon parties to come to a settlement in cases he has power to try;

(3) conciliation *à l'audience*— in which he similarly tries to bring to an understanding the parties in cases beyond his jurisdiction.

In both forms of conciliation the citation alone has, in a large number of cases, the effect of bringing the parties to an understanding without actually appearing.

See Mr. FitzPatrick's Note, under my letter of 26th ultimo. Sir R. Temple's Minute, April 14th, 1879, page 4.

41. It will be generally admitted that we have not got in the Deccan any *class* of persons of sufficient independence, honesty, leisure and attainments to be invested with, and successfully exercise, original civil jurisdiction as the *juges de paix* do. If there are any isolated individuals fit for it, they can, under the proposed draft Bill, be made Village Munsifs. This disposes of the two first heads above. But there are many persons who may well have authority to effect simple conciliation, and to this a prominent place in the Bill is accordingly assigned by this Part. The only material deviation from the French system is that the attendance of the defendant before the Conciliation Judge will not be compulsory.

42. The provision of conciliation as a preliminary to litigation seems of incalculable importane. Regarding the French system, I may refer to the valuable Note on his own experiencess of it which Mr. FitzPatrick has kindly written for me, as also to the remarks of the Secretary of State, the communications from Major Goldsmid, and the Notes of Sir Erskine Perry. The sections speak for themselves; but I may point out that both Section 63 and Section 69 (paragraph 2) have been so framed that application to a Conciliation Judge will be necessary before a sowcar can get execution of a decree about which a dispute arises. Much benefit is expected from this, especially in the case of old decrees, as it will in very many instances lead to an amicable settlement without going to the court at all.

Poona Sabha's Journal, October 1878.

PART VII.—*Of Legal Practitioners.*

43. This Chapter regarding the exclusion of Pleaders accords with the suggestions of the Secretary of State, and is based on the French and Madras law. The provision in the French Code is most stringent and runs thus:

Pleaders.

Aucuns avoués greffiers, huissiers, et ci-devant hommes de loi ou procureurs ne pourront representer les paries aux bureaux de paix.

The Madras law allows the deputation of a relative, servant or dependant, so that a sowcar could, for instance, send his *gomashta*, and a ryot could send or bring with him a clever son or nephew educated in a Government school.

The draft follows the Madras law in this respect, but excludes Pleaders in all cases before a Village Munsif or Conciliation Judge, and except with the Judge's permission for reasons to be recorded, in cases before a Subordinate Judge not exceeding R100.

The appointment of a Government Pleader in certain cases has been suggested in several quarters, and seems reasonable. Probably it would not often be required.

Dec. R. Rep., page 111.
Dec. R., App. A, pages 278-91.

PART VIII.—*Registration by Village Registrars.*

44. This part follows in detail the draft regarding Village Notaries originally submitted by the Bombay Government, but with one important addition (Section 77) making all Village Registrars (as it is now proposed to call them) subordinate to the Inspector-General of Registration. These modifications will, it is hoped, remove any objections to the measure which may have been entertained.

Bombay No. 4579, September 5th, 1878, paragraph 17(3).
India No. 696, November 27th, 1878, paragraph 12.

45. The Deccan Riots Commission fully substantiate the necessity for providing that every instrument to which an agriculturist is a party shall be written by or under the superintendence of a Village Registrar and attested by him; that the Registrar shall give a copy of it to the party not entitled to the original, and shall both endorse on the original whether transfer of consideration took place or not, and mark for future identification any instrument which such original supersedes. The reasonableness of such a measure is evidenced by the provisions for notaries in France and most other European countries, and by the penalty in England on unauthorised pensons practising as conveyancers. The proposed village registration will thus supplement the ordinary registration under Act III of 1877, as far as is necessary for the prevention of frauds of the special character proved to be prevalent.

Dec. R. Rep., page 96 to 100 and 117 to 121.
Dec. R. Rep., page 99-100.

PART IX.—*Of Receipts and Statements of Accounts.*

46. This Part is directed against frauds in the accounts, as Part VIII was aimed at frauds in bonds. These frauds are of so varied a character, and the evidence of them is so mixed up with other subjects, that it is not easy to select definite quotations of authority. These frauds are not always on the part of creditors, though they are chiefly so. The debtor

Bombay No. 2202, April 6th, 1877, paragraph 6.
Dec. R. Rep., page 98

*

Dec. R. Rep., page 117.

in the rare case when he possesses sufficient intelligence, is driven by our system to meet lie by lie and fraud by fraud. The Commission thus enumerate the chief frauds which are practised:

By creditors: (1) forging bonds; (2) withholding the consideration mentioned in a bond; (3) obtaining new bonds in satisfaction of old bonds and of decrees, and nevertheless enforcing the latter; (4) not giving credit for payments; (5) refusing to explain or wrongly representing their accounts to debtors.

By debtors: (6) pleading that bonds are false when they are really genuine; (7) tending in evidence false receipts and false evidence of alleged payments.

The present Part is designed to prevent frauds of the kinds (4), (5), and (7), the remainder are dealt with by Part VIII. Some provisions of both Parts may to some eyes seem to be too minute to be satisfactorily workable. But due allowance must be made for the existence of a ryotwari settlement, for the detailed regulations which the position of Government as a landlord necessitates, and for the intimate personal relations with the people resulting from residence of revenue officers in camp for six or seven months of every year. For instance, the granting of receipts for revenue payments and furnishing every ryot with a copy of his account, or giving him access to the latter, have been provided for by law since the commencement of British rule, and the calling ryots in person by thousands, and testing the pass-books or receipts given to them by the Government books, is one of the most ordinary and useful duties of an Assistant or Deputy Collector in Bombay.

Nairne's Revenue Handbook. Hope's Manual of Revenue Accounts. Bombay Reg. XVII, 1827, s. 15.

PART X.—*Miscellaneous.*

47. This part contains the general provisions, usual in most Acts to enable the Local Government to make rules to ensure their efficient working in matters of detail.

General Remarks.

48. Reviewing the Bill broadly, it may fairly be said to secure, to an extent not hitherto attempted,—

(1) Precautions against fraud by either debtor or creditor in their original transactions with each other;

(2) Interposition of friendly conciliation between disputants previous to litigation;

(3) Approximation of the courts to the homes of the people;

(4) Simplification of procedure, and diminution of the cost and technicalities arising from legal practitioners;

(5) Equitable jurisdiction to reduce all exorbitant petitions and fraudulent claims;

(6) Finality of judicial decisions, subject to adequate safeguards;

(7) Prompt and unfailing enforcement, through the Collector when necessary, of all adjudicated claims of reasonable amount;

(8) Discharge of the debtor from claims, or such balance of them, as, after all reasonable enforcement for a long period, could not be fully realized, except by demoralizing or life-long bondage.

Such a result, while falling not short in favour of either debtor or creditor, of what is fairly commensurate with the nature of the case, the analogy of law in other countries, the rules of pecuniary need and supply, and the strictest equity, goes no further in reform than the political necessity of a prompt and effective remedy for the serious social disorders of the Deccan, no less than the emphatic and reiterated expression of the Secretary of State's wishes, appear imperatively to demand.

49. In conclusion, while regretting for the sake of my readers the length of this memorandum, I must express the great difficulty I have felt in dealing, in a limited space, with subjects which admit of discussion from many points of view, and in selecting from the mass of evidence available references and quotations which, without being tedious, should be of sufficient authority. To this difficulty must be ascribed many omissions which will perhaps be obvious.

SIMLA;
The 8th May 1879.

T. C. HOPE.

DECCAN RYOTS' RELIEF BILL.

No. 62.

FURTHER NOTE.

IN consequence of remarks, criticisms and additional information which have reached me since my return from Bombay, I am now in a position to submit for consideration proposals upon two important subjects which are not embraced in the draft Bill at present before the Government of India, namely, the Limitation Law and Arbitration.

THE LIMITATION LAW.

Old and present law.
Dec. R., Ap. B., p. 317.

2. The old law of Bombay (Regulation V, 1827, Sections 3 and 4) fixed twelve years in the case of debts supported by a bond, and six years in the case of debts not so supported, as the periods within which civil suits for recovery must be brought respectively. By Act XIV, 859 these periods were reduced to six and three years respectively, with the further restriction that a debt supported by written contract was to come under the three years' period unless it was registered. This is the present law, Acts IX of 1871 and XV of 1877 having made no material change.

Effects of present law.
Dec. R., Rep., p. 46, & 94-6.

"Famine and Debt" in "The Nineteenth Century," September 1877, page 186.

3. There is an almost universal consensus of opinion that "the reduction in the per iods of imitation has been the cause of considerable hardship to the debtor." Under the old law the debtor was rarely sued or called upon to renew the bond till near the expiration of the twelve years, and then he was, at most, sued under the provision of *dam dupat* for twice the principal sum lent. But under the law since 1859 the creditor is forced within every three years either to sue the debtor or to obtain from him a fresh bond for principal and any accumulated interest. In practice he does so nearly every two years, in order to make sure of not missing the period through any accident or default. To shew the difference between the two laws, R100 at 9 per cent. become R208 in 12 years; but if the bond be renewed triennially, the amount is raised to R260. At the higher rates which are but too common, the effect is more startling: R100 at 25 per cent. become R400 in 12 years, but renewals every two years produce a total of R1,139! That these results are actually enforced in practice is amply proved by the evidence taken by the Commission, from which Mr. Pedder gives a few illustrations. In short, the debtor thus (1) suffers the cost of writing and stamping a new bond, (2) is charged compound interest instead of simple, (3) often has to bear the expenses of a suit, and (4) is frequently obliged also to submit to a large nominal increase of the principal as the price of the creditor's forbearing to sell him entirely up or to have him arrested and imprisoned.

Memo., p. 35-7, & 51.
Memo., p. 3-9, 38, 84.

4. It is perhaps unnecessary for me to quote numerous authorities at length to prove the general results above referred to. The collective opinion of the Commission has been stated. Mr. Auckland Colvin summarises the evils and favours a change. Mr. Shambhuprasad has treated the subject with much minuteness, and strongly urges the restoration of the old Bombay law. Revenue and judicial officers, both Native and European, take the same view in their letters to the Commission. Mr. Pedder has been quoted already. Mr. Wedderburn, in a report (to Judicial Secretary, dated December 7th, 1876) specially called for by the Bombay Government advocates a twelve years' limit, and it has, I observe, been adopted as desirable at a public meeting of the inhabitants of Poona held less than a month ago. The Collector of Poona gave evidence to the same effect before the Famine Commission.

Official position of the question.

5. The Government of Bombay, in their letter No. 2202 of April 6th, 1877, paragraph 13 (7), expressed a strong opinion in favour of the twelve years' period. More recently, however, that Government stated (No. 5024, dated October 2nd, 1878), in reply to an enquiry from the Government of India, that—

> if the other recommendations made by them for the relief of indebted agriculturists in the Bombay Presidency be adopted, His Excellency the Governor in Council thinks that the law of limitation may stand as it is, for, in his opinion, it is better not to alter the general law save under necessity, which he doubts in this particular.

This statement will probably suffice to account for the absence of any provision regarding limitation from the draft Bill lately received from Bombay. By the Government of India the question was received (November 2nd, 1878) for further consideration by the Select Committee on the Bill then contemplated.

6. The only plea which has, as far as I am aware, been advanced in favour of the three years' period is that it obliges the making up of accounts at short intervals, thus enabling the ryot to know how he stands, and preventing his being deeply involved without his knowledge. This objection had undoubtedly very considerable weight at the time it was made. Whether he benefit of a short account, thus secured by a three years' limitation, out-weighed the evils of a new bond, compound interest, etc., which it frequently involved, is a point upon which there may well be difference of opinion. I may here invite attention to the remarks in the Governor General's Council on the passing of the Limitation Act (Proceedings, 19th July 1877, page 470), as shewing that, even in the case of all India, an assimilation to the English limit of six years for debts on simple contract has not been deemed unreasonable.

Changed aspect of question on its merits.

7. But the whole aspect of the question seems to have been changed by the insertion, in the new draft Bill, of Part VIII, regarding receipts and statements of account. This compels creditors, under penalties enforceable before a Magistrate, to give their agriculturist debtors not only receipts but annual statements of account, and to enter them in a pass-book if required. Taken in connection with Section 37, which enables any agriculturist to sue for an account, and to get a declaration of the amount really due to him under all the new and searching provisions of the Act, it would appear that the object of short accounts will now be attained, and perhaps more efficiently than it ever could have been by the indirect expedient of a limitation law.

Proposal for extended limitation.

8. If this view of the question be correct, and the Government of India should think proper to concur in it on the evidence, the Government of Bombay might perhaps now see no objection to the insertion in the Bill of a section following the original Bombay law as explained above. In a Bill containing so many special provisions of local application, this departure from the general law appears unobjectionable.

Arbitration.

9. The expediency of further utilising the punchayet system was brought specially to my notice in paragraph 3 of Mr. Bernard's letter No. 223 of February 26th, in connection with an article in the *Akhbar-i-Anjuman-i-Punjab*, and he has since (May 11th) forwarded to me demi-officially, by desire, an extract from the report on native newspapers bearing on the same subject. The burden of the two newspapers of Northern India is that village punchayets should be invested with jurisdiction (subject to appeal) in marriage and caste matters, as also in petty criminal cases, and in suits for debt and damages to property up to R20 in value. The legalisation of the punchayet system in Madras is a chief argument used. In Bombay voluntarily established Arbitration Courts exist in Poona and a number of the larger towns, and there is a strong popular agitation, supported by some judicial officers of Government, in favour of putting punchayets upon a recognised footing.

History of arbitration.

10. The history of the question shows that arbitration in civil cases has always been recognised by the law, but less so in recent than in former times, owing, as far as I am informed, to the spontaneous decay of the system. In Bombay, Regulation VII of 1802 provided very efficiently for arbitration. The clever portrait of its corrupt working given in the story "Pandurang Hari" is borne out by the emphatic warning of Mountstuart Elphinstone against professional arbitrators. By his Code of 1827 (Regulation VII) punchayets received considerable assistance in the way of summoning witnesses, enforcing awards, etc., but resort to them gradually died out, and the Regulation was repealed in 1861 on the enactment of the ordinary arbitration clauses of the Civil Procedure Code. In Madras the old law for village punchayets, Regulation V of 1816, still survives, but only 420 suits per annum were filed between 1863 and 1868 when our statistics closed. District punchayets in Madras were abolished by Act III of 1873. The history of the institution in other Provinces I have not searched out; but the returns of 1877 shew the number of cases disposed of by arbitration under the Civil Procedure Code to have been as shewn in the margin. His Honour the Lieutenant-Governor of the Punjab informs me that he attributes their large proportion of arbitration cases to the care taken to maintain the system which prevailed

Province.	Number of cases.
Madras	363
Bombay	481
Bengal	1,287
North-Western Provinces	847
Oudh	540
Punjab	4,234
Other Provinces	432
	8,184

11. It appears to me that punchayets are an institution which may, perhaps, have been fairly efficient in days when society was in a primitive condition, when people went little beyond the bounds of their village, and when the decision of village elders, as such, carried weight in itself and was enforceable by practical social penalties. Now-a-days this is all changed or changing. The elders, whether in age, wealth or position, are often the least travelled, educated and intelligent, and at the same time the most indebted of the community. The idea that it is possible to find in every village, or even in every small circle of villages, a body of men sufficient in number to allow selection from them by litigants for the formation of a punchayet, and at the same time qualified to be arbitrators by influence, intelligence and absence of interest, I look upon as wholly visionary, and I believe that any attempt to create by law such an organization generally could but lead to corruption, increased litigation, and disappointment. It is well worthy of note that none of the present ardent advocates of punchayets have sufficient faith in them to propose that there shall be, as of old, no appeal from their decisions. On the contrary, they appear to desire strict regulations involving checks and delays, which would practically destroy the freedom, simplicity, and promptitude supposed to be the chief recommendations of the system.

Obstacles to general establishment of punchayets.

12. On the other hand, when we find a popular sentiment, originating probably in aversion to our courts as now conducted, running strongly in favour of voluntary settlement of disputes, it seems to me that no harm can be done by legalising such settlement on a purely permissive basis. No one should be compelled to resort to independent Arbitration Courts, but those who like them should have fair assistance in arriving at a settlement through their instrumentality. In short, we might safely revert to pretty much the position of Regulation VII, 1827. But more than this, it would seem that such a measure might at the present juncture be highly politic, tending to allay public discontent in the Deccan, and to prove that the British Government has no objection to allow the respectable Native population to exercise such jurisdiction as their countrymen show themselves practically willing that they should hold.

Permissive measure practicable.

13. In any measure of this kind, it would obviously be desirable to take advantage of all self-constituted Arbitration Courts. Between such courts and Conciliation Judges or Village Munsifs there is no connection, but of course individuals holding either of the latter posts would be eligible as arbitrators, and might be recognised as such, in order to give them, solely or in conjunction with others on a punchayet, the assistance of the law. The post of arbitrator should be honorary, as those of Conciliation Judge and Village Munsif are to be, in order not to favour the growth of a class of professional arbitrators.

14. I would, therefore, recommend that the new Act should comprise two sections of some such purport as the following:

I.—The Local Government may from time to time, by notification in the official Gazette, appoint, to be within any specified local area arbitrators recognised under this Act, the following persons, that it is to say—

(a) the members for the time being of any local Arbitration Court;

(b) any individual whom the Government deems to be of good character and competent.

When any persons refer any matter of difference between them to any Arbitration Court or arbitrator so recognised, such court or arbitrator shall, on application to the Subordinate Judge of the division, receive from such Judge the assistance, by issue of process, provided in Section 513 of the Code of Civil Procedure.

Any reference to an Arbitration Court or a recognised arbitrator may provide that, in the event of any party thereto giving notice, within fifteen days of the date of the award, to the Subordinate Judge of the division that he is dissatisfied with the same, the matter in dispute shall be referred back to the same court of arbitrator sitting with such Judge as President. When any such matter is so referred back, the decision shall be according to the opinion of the majority, and in the event of an equality of votes, the opinion of the President shall prevail.

II.—In any suit or matter the court shall at all times promote by all lawful means in its power, the settlement of the questions at issue by agreement between the parties, or by arbitration.

Provision for subsidiary rules would probably be necessary, and might be inserted in Section 85. The second section has special reference to the remarks of the Lieutenant-Governor of the Punjab above mentioned, and to the fact, which I have recently ascertained from the statistics of the High Court, that in the four disturbed districts of the Deccan not a single case before the courts was settled by arbitration in the year 1876 or 1878. I am informed, indeed, that many Sub-Judges have a strong prejudice against arbitration.

15. Further than this, I myself, as at present informed, should feel reluctant to go. But the Government of Bombay have, or shortly will have, the whole question under consideration

in connection with the more advanced proposals submitted to them by Mr. Wedderburn on behalf of the Poona meeting. If the Government of India are disposed to think it desirable that independent arbitration should in some form be provided for in the Bill, the opinion of the Government of Bombay might be invited.

SIMLA;
The 29th May 1879.

T. C. HOPE.

From J. B. PEILE, Esq., Acting Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India,—No. 3005, dated Bombay Castle, the 7th June 1879.

I am directed to forward the accompanying copy of a corrected Bill for the Relief of Indebted Agriculturists in certain parts of the Bombay Presidency, and to request that it may be substituted for that transmitted to the Government of India with my letter No. 2056, dated 18th April 1879.

A BILL FOR THE RELIEF OF INDEBTED AGRICULTURISTS IN CERTAIN PARTS OF THE PRESIDENCY OF BOMBAY.

WHEREAS it is expedient to relieve the agriculural classes in certain parts of the Presidency of Bombay from indebtedness; It is enacted as follows:—

PART I

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Bombay Agriculturists Relief Act, 1879."

Extent and commencement.

It extends only to the districts of Poona, Satara, Sholapur and Ahmednagar, and shall come into force in those districts on the day of 18 ;
but it shall be lawful for the Local Government, with the previous sanction of the Governor General in Council, from time to time, by notification in the *Bombay Government Gazette*, to extend all or any of its provisions to any other local area within the said Presidency.

Definitions.

2. In this Act, unless there be something repugnant in the subject or context:

"Agriculturist."

(1) the word "agriculturist" means a person who earns his livelihood wholly or principally by agriculture;

"Money."

(2) the word "money" includes grain and any other agricultural produce;

"Pleader."

(3) the word "pleader" has the same meaning as in the Code of Civil Procedure.

Repeal of Bombay Regulation, V of 1827, Section 9, clause I.

3. Clause (1) of sectio 9 of Bombay Regulation, V of 1827, is repealed so far as regards any suit to which Section 33 of this Act applies.

PART II.

OF THE CIVIL COURTS.

Subordinate Judges to exercise the jurisdiction of Courts of Small Causes in certain cases.

4. Subordinate Judges of the first and second classes shall exercise within the limits of their ordinary local jurisdiction the jurisdiction of a Court of Small Causes for the trial of—

(*a*) suits cognizable by such courts up to the amounts of five hundred and one hundred rupees respectively; and

(b) suits between mortgagors and mortgagees for the foreclosure or redemption of mortgages, or for the possession or profits of the land mortgaged, where the mortgagor is an agriculturist, and the value or amount of the claim does not exceed five hundred or one hundred rupees, respectively; and

(c) suits by agriculturists for an account as hereinafter defined without limit as to value or amount.

Distribution of business between a Court of Small Causes and a Subordinate Judge having co-ordinate jurisdiction.

If the territorial limits of any Court of Small Causes established under Act XI of 1865 shall be co-incident, or partly co-incident, with the local limits of the jurisdiction of the court of a Subordinate Judge, the District Judge to whom the said courts are subordinate may from time to time make such orders as he shall deem fit for regulating the cognizance of the suits in which the said courts have co-ordinate jurisdiction.

Appointment of Village Munsifs.

5. The Local Government may from time to time—

(a) appoint any persons to be a Village Munsif; and

(b) cancel any such appointment.

Extent of jurisdiction.

Every Village Munsif so appointed shall be subordinate to the District Judge and, subject to his general control, shall take cognizance of suits for money lent, or advanced to, or paid for the person sued, or due on an account stated, or on a written or unwritten engagement to pay up to the amount of ten rupees within such local limits as shall from time to time be determined by the Local Government.

District Judge may sit with one or more Subordinate Judges as a Bench for trial of any case.

6. The District Judge may stay the proceedings in any suit or other matter pending before any court subordinate to him, and sit together with the Judge of the said court, or with the Judge of the said court and the Judge of any other court subordinate to him, as a bench for the disposal of the same. If the members of such bench differ in opinion, the opinion of the District Judge shall prevail.

Assistant or Subordinate Judge may be appointed to inspect subordinate courts.

7. The Local Government may appoint any Assistant or Subordinate Judge to inspect and supervise, subject to the orders of the District Judge, every court subordinate to such Judge, and every Concilation-Judge's court within the local limits of such Judge's jurisdiction.

One such Assistant or Subordinate Judge may be appointed for two or more districts, if the Local Government thinks fit.

Any Assistant or Subordinate Judge so appointed may, if the District Judge so directs, exercise the powers of a District Judge under section 6 of this Act, or under section 25 of the Code of Civil Procedure.

PART III.

Of Procedure.

Subordinate Judges.

Suits to be commenced by a plaint.

8. Every suit instituted in the Court of a Subordinate Judge under section 4 of this Act shall be commenced by presenting a plaint to the Court, or to the Clerk of the Court, if any have been appointed. The plaint shall contain the following particulars:— Bombay Act III, 1876, sec. 5. C. P. C., secs. 48 and 50.

(a) the name, religion, caste, profession, and place of abode of the plaintiff and the defendant;

(b) a plain and concise statement of the circumstances constituting the cause of action and when and where it arose;

(c) the amount or other relief claimed, or the nature and situation of the property of which, or of the profits of which possession is sought, as the case may be;

(d) a list of the documents and of the witnesses, if any, the plaintiff wishes to adduce, and whether the witnesses are to be summoned to attend, or will be produced at the time and place appointed for the hearing.

Bombay Act III., 1876, sec. 8.

Amendment of plaint.

9. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contains particulars other than those specified, or if the statement of particulars be unnecessarily prolix, or if the amount or value of the claim be undervalued, or the stamp insufficient, the Court shall, at its discretion, order the necessary amendment to be made then and there, or within three days from the date of such order.

Bombay Act III., 1876, secs. 6 and 7.

Plaint to be subscribed, verified and endorsed.

10. When the plaint is in due form, the Subordinate Judge shall require the plaintiff to subscribe and verify it in his presence in open court in the manner following, or to the like effect:—

"I, *A.B.*, the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

The Subordinate Judge shall endorse the plaint to the effect that it was duly subscribed and verified in his presence.

If the plaintiff cannot write, the verification may be written for him in open court, and the Subordinate Judge shall in such case record that the verification was made in his presence at the request of the plaintiff who affixed his mark to his name in token of the authenticity of the verification.

Bombay Act III., 1876, sec. 9. C. P. C., secs. 53—5.

Rejection of the plaint.

11. The Subordinate Judge shall reject the plaint if it appear upon the face of it, or after questioning the plaintiff, or on summary enquiry as the case may be, that—

(*a*) no cause of action is disclosed;

(*b*) the subject of the plaint is not within the jurisdiction of the Court;

(*c*) the suit is barred by any positive rule of law.

The reason of rejection shall be written on the plaint by the Subordinate Judge with his own hand.

Bombay Act III., 1876, sec. 11.

Procedure on admission of plaint.

12. If the Subordinate Judge admit the plaint, he shall receive and register it, and shall appoint a convenient day and place for the trial and final disposal of the case. The day to be fixed shall not be earlier, except by consent of both parties, than ten days, nor except for unavoidable reasons later than fifteen days from the day when notice of such appointment issues.

Notice shall be given verbally to the plaintiff to appear with his documents and witnesses on the day and at the place appointed.

A summons shall at the same time be issued to the defendant.

Bombay Act III., 1876, sec. 12.

Attendance of witness.

13. If either party require his witnesses to be summoned to appear on the day and at the place appointed, the Subordinate Judge shall issue summonses for that purpose.

Bombay Act III., 1876, sec. 13.

Effect of default of plaintiff.

14. If the plaintiff fails to attend with his documents, or omits to adopt measures to procure the attendance of his witnesses on the day and at the place appointed, and fails to satisfy the Court either on such day or within fifteen days afterwards, that he was prevented from so doing by some unavoidable circumstance, the Court shall reject the plaint, and may award to the defendant such compensation as it thinks fit for any expense and loss of time he may have suffered. Such rejection shall bar a fresh suit.

C. P. C., sec. 103.

No suit to be decided *ex parte.*

15. No suit shall be heard or determined *ex parte.*

C. P. C., sec. 174.

If the defendant fails to attend, the Court shall adjourn the hearing and take steps to secure his attendance by the issue (*a*) of a fresh summons, or (*b*) of an order that he be arrested and brought before the Court.

Upon the defendant's appearance, the case shall proceed.

Bombay Act III., 1874, secs. 14 and 15.

Hearing of the case.

16. Upon the day originally appointed, or any day to which the case may be adjourned as aforesaid, the Court shall proceed to fix such issues as it may deem proper, to hear the evidence and to pass judgment and issue its decree.

The proceedings may be from time to time, adjourned for sufficient reason.

17. In cases in which the matter at issue is of smaller amount or value than ten rupees, it shall be discretionary with the Court to take the depositions of the witnesses in writing or not. Mad. Reg. V., 1816, sec. 4, cl. 10.

Record of evidence.

In cases in which the matter at issue is of the amount or value of ten rupees or upwards, it shall not be necessary to take down the evidence of the witnesses in writing at length; but where the evidence is not so taken, the Subordinate Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Subordinate Judge with his own hand, and shall form part of the record. C. P. C., sec. 189.

18. No written statement other than the plaint shall be received unless required by the Court, or with its permission. Act XI, 1865, sec. 18.

Written statements.

19. After the evidence has been taken, and the parties have been heard, the Subordinate Judge shall pronounce judgment in open court either at once or on some early future day. C. P. C., sec. 198.

Judgment.

In any case in which the evidence of the witnesses has been recorded in writing at length or in substance by a memorandum made by the Subordinate Judge, the judgment need not contain more than the points for determination and the decision thereupon. C. P. C., sec. 203.

In other cases, the judgment shall also contain the substance of the evidence, with a concise statement of the case and of the reasons for the decision. Act IV., 1877, sec. 126, and Crim. P. C., sec. 228.

20. The chapters and sections of the Code of Civil Procedure hereinafter mentioned extend (so far as they are applicable and not inconsistent with this Act) to Subordinate Judges exercising jurisdiction under section 4 of Part V of this Act, that is to say,— C. P. C., sec., 5.

Partial application of Code of Civil Procedure.

Preliminary—Section 1, 2 and 3.

Chapter I.—Of the jurisdiction of the Courts and *res judicata*, except section 11.

" II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

" III.—Of Parties, and their Appearances, Applications and Acts.

" IV.—Of the Frame of the Suit.

" V.—Of the Institution of Suits. Sections 49, 59 and 60 to 63 (both inclusive).

" VI.—Of the Issue and Service of Summons, except sections 64 to 71 (both inclusive).

" VIII.—Of Written Statements and Set-off. Section 111, section 112, paragraph 2, section 113 to 116 (both inclusive).

" IX.—Of the Examination of the Parties by the Court.

" X.—Of Discovery and the Admission, etc., of Documents.

" XIV.—Of the Summoning and Attendance of Witnesses. Sections 163 to 167 (both inclusive), section 168 (substituting in the last paragraph "Subordinate Judge" for "Court of Small Causes") to 173 (both inclusive), section 174, except the Explanation, sections 175 to 178 (both inclusive).

" XV.—Of the Hearing of the Suit, etc. Sections 179, 180, 181, 186, 187, 188, 190 to 193 (both inclusive).

" XVII.—Of Judgment and Decree. Sections 199 to 202 (both inclusive), 205 to 112 (both inclusive), 216 and 217.

" XVIII.—Of costs. Sections 220, 221 and 222.

" XIX.—Of the Execution of Decrees. Sections 230 to 258 (both inclusive), section 259 (except so far as it relates to the recovery of wives), 263, 264, 266 to 335 (both inclusive).

" XXI.—Of the Death, Marriage, and Insolvency of Parties.

" XXII.—Of the Withdrawal and Adjustment of suits.

" XXIII.—Of Payment into Court.

" XXIV.—Of requiring Security for Costs.

" XXV.—Of Commissions.

" XXVI.—Suits by Paupers.

" XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.

" XXIX.—Suits by and against Corporations and Companies.

Chapter XXX.—Suits by and against Trustees, Executors and Administrators.

" XXXI.—Suits by and against Minors and Persons of unsound mind.

" XXXII.—Suits by and against Military men.

" XXXIII.—Interpleader.

" XXXIV.—Of Arrest and Attachment before judgment. Sections 483 to 490 (both inclusive) and section 491 (so far as relates to attachments).

" XXXV.—Of Temporary Injunctions, etc. Sections 492 and 494 to 497 (both inclusive).

" XXXVII.—Reference to Arbitration.

" XLVII.—Of Review of Judgment.

" XLIX.—Miscellaneous. Sections 640, 641, 642, 643, 645, 647, 648 (so far as relates to attachments), and 651.

Except as is in this Act otherwise specially provided, the provisions of the said Code or of any other enactment now in force for regulating the procedure of civil courts, shall not apply to the proceedings of Subordinate Judges under the said section or Part of this Act.

Village Munsifs.

Suits before Village Munsifs to be commenced by a plaint.

21. Every suit before a Village Munsif shall be instituted by presenting a plaint to such Munsif signed or attested by the mark of the plaintiff, and containing the particulars prescribed in section 8 of this Act.

Mad. Reg. IV. of 1816, Sec. 12.

Procedure on receipt of plaint.

22. Upon receipt of any such plaint, the Village Munsif shall, by verbal summons through the village officers, or in such other manner as he deems fit, require the defendant to appear before him in person within two days or such longer period as he shall deem reasonable.

The Village Munsif may from time to time extend the period for the defendant's appearance if the defendant is absent from the local limits of his jurisdiction, or for any other sufficient reason.

If the defendant fails without reasonable cause to attend, the Village Munsif may adjourn the hearing and secure his attendance either by the issue of a written summons, or by an order that he be arrested and brought before him.

Notice shall be given verbally, or, if in any rule made under section 85, the Local Government shall so direct, in writing, to the plaintiff to appear on the day appointed for the defendant's appearance.

Plaint to be explained to the defendant.

23. Upon the day originally fixed, or any day to which the case may be adjourned as aforesaid, the Village Munsif shall explain the nature of the plaint to the defendant in the presence of the plaintiff.

Mad. Reg. IV. 1816, sec. 14.

If defendant objects to the claim, inquiry to be held.

24. If the defendant shall object to the claim the Village Munsif shall proceed, either immediately or on some other day as soon after as the business before him will permit, to inquire into the truth of the claim and of the defendant's objection thereto respectively.

Decision may in certain cases be given without examination of witnesses.

If the parties are willing to dispense with the examination of witnesses, the Village Munsif shall give his decision on consideration of the statements of the parties and of any documents which they may produce for his perusal; or if either party shall consent in writing to let the case be settled by the evidence of the other on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which such other party belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Village Munsif may, if he thinks fit, tender such oath or affirmation to such other party, and if he agrees in writing to make the same, shall give his decision in accordance with the evidence which the said party shall give on such oath or affirmation.

Mad. Regulation V., 1816, sec. 4, cl. 10.

Examination of witnesses.

25. The Village Munsif shall receive such evidence as may be tendered by the parties, and for this purpose shall have power to summon any person residing within the local limits of his jurisdiction or within a distance of ten miles from the place where he holds his court, to give

evidence or to produce any document in his possession or power. The depositions of the witnesses may be taken in writing or not, as the Village Munsif shall in each case think fit.

Punishment of recusant witnesses.

Any witness duly summoned by the Village Munsif who shall refuse to attend, or attending shall refuse to answer, and any witness or party refusing to produce any document required, may be fined by the Village Munsif a sum not exceeding one rupee, or may, at the instance of such Village Munsif, be proceeded against by a Subordinate Judge under section 174 of the Code of Civil Procedure. Mad. Regulation IV., 1816, sec. 15, cl. 6.

Any fine inflicted by a Village Munsif under this section may be recovered by the Collector under the law for the time being in force for the recovery of arrears of land revenue. Mad. Regulation IV., 1816, sec. 25.

Contents of decree.

26. When the parties have been heard, and the evidence, if any, on both sides taken and considered, the Village Munsif shall pass his decree, which shall be written and signed by himself, and shall bear date the day on which it is passed, and shall contain the number of the suit and the names of the parties, and shall specify clearly the amount awarded, or other determination of the suit. C. P. C., secs. 205 and 306.

Execution of Village Munsiff's decrees.

27. In every such decree the Village Munsiff shall also specify such period, not exceeding six months, as he shall deem fit to allow for the satisfaction of the same by the parties amongst themselves. Mad. Regulation IV., 1816, sec. 23.

If at any time within one month after the expiry of the period so fixed, the judgment creditor shall prove to the satisfaction of the Village Munsiff that the decree has not been satisfied, or has not been fully satisfied, the Village Munsiff shall forward a certified copy of the said decree to the Court of the Subordinate Judge having jurisdiction in the place where the judgment-debtor resides, together with a certificate setting forth the extent, if any, to which satisfaction of the said decree has been obtained.

The Court to which a decree is so sent shall deal with it as it would deal with a decree sent to it for execution under section 224 of the Code of Civil Procedure.

Record.

28. Every Village Munsiff shall keep a register in which he shall from time to time enter with his own hand the names of the parties in every case which comes before him, the dates of all their appearances, the names of the witnesses examined for either party and, when their depositions are not taken in writing, the substance of their evidence, and a concise statement of the points at issue, and of the reasons for the decision.

General Provisions.

Court of first instance to determine, when necessary, whether party is an agriculturist.

29. Whenever under any provision of this Act, the jurisdiction or procedure of a court or the nature of its decision depends upon any party to a suit or application being an agriculturist, it shall be the duty of the court in which such suit or application is brought to ascertain and determine whether such party is an agriculturist.

The decision of any court of first instance that a party is or is not an agriculturist shall be final. Bom. Bill I., sec. 3.

No appeal in cases tried under this Act.

30. No appeal shall lie from any decision or order of a Village Munsiff or Subordinate Judge or of a District Judge, or Assistant Judge in exercise of any jurisdiction conferred by this Act. Act XI., 1865, sec. 21.

Reference of questions.

31. If before or on the hearing of any suit or other matter by any such Munsiff or Judge any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, arises on which the Court entertains reasonable doubt, the Court may draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement, with its own opinion on the point, for the decision of the District Judge, or, if the District Judge be dealing with the case, of the High Court. Pending the receipt of a decision upon such reference, the proceedings shall be stayed. C. P. C., sec. 617.

Crim. P. C., sec. 295.

Of revision.

32. The District Judge may call for and examine the record of any suit or other matter tried under this Act for the purpose of satisfying himself of the legality or propriety of any decree or order passed, and as to the regularity of the proceedings, and may pass such order thereon as he thinks fit.

The Assistant or Subordinate Judge appointed under section 7 may similarly call for and examine the record of any such case, and if he see cause therefor, may refer the same, with his remarks, for the orders of the District Judge:

Provided that no decision or order shall be reversed or altered for any error or defect, or otherwise unless a failure of justice shall be deemed to have taken place:

Provided also that nothing herein contained shall authorize the reversal of the decision of any court of first instance that any person is, or is not, an agriculturist.

PART IV.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

Bombay Bil I, secs. 3 and 4.

Actual amount of money lent, etc., to be ascertained when the debtor is an agriculturist.

33. If in any suit brought for the recovery of money alleged to be payable on account of money lent or advanced to, or paid for the defendant, or on an account stated, or on a written or unwritten engagement, or for the redemption or foreclosure of a mortgage, or for the possession of profits or mortgaged land, the defendant, or any one of the defendants, not being a surety merely of the actual debtor, or the mortgagor, or any one of the mortgagors, as the case may be, is an agriculturist, the Court shall ascertain the actual amount of money lent, advanced, paid or due. For this purpose the Court shall irrespectively of the provisions of the Indian Evidence Act,—

(*a*) inquire into the origin of the debt, and the nature of each subsequent transaction, if any, in respect thereof;

(*b*) if any written acknowledgment of debt is relied on by the plaintiff, ascertain whether the whole of the amount therein named was advanced to the debtor.

The Court shall further enquire into the history and merits of the case, with the view of ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise.

Bombay Bill I., sec. 5.

If not ascertainable, may be fixed equitably.

34. If in any such suit a doubt arises as to the actual nature and extent of the transactions between the parties, the following shall be relevant facts, that is to say—

(*a*) the means and position of the lender at the time the debt was incurred;

(*b*) the means and position of the borrower at such time;

(*c*) the state of the borrower's credit at such time, and the prospect at such time of his repaying a loan of the alleged amount;

(*d*) the circumstances under which the money was borrowed; and

(*e*) the requirements of a person in the borrower's station of life under such circumstances.

Bombay Bill I., sec. 6.

Reference to arbitration in certain cases.

35. The Court may of its own motion, and if both parties so desire shall, refer the question of the sum to be allowed on account of the principal of the debt to arbitration.

When any such reference is made by desire of the parties, nomination of the arbitrators shall be made in accordance with section 507 of the Code of Civil Procedure. When the reference is made of its own motion by the Court, it shall appoint three arbitrators, who shall be residents of the same village, town or city in which the debtor and creditor reside, if they both reside in the same village, town or city, and if, in the opinion of the Court, fit and proper persons can be thus obtained.

The provisions of sections 508 to 521 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

Bombay Bill II., sec. 4.

Reasonable interest to be allowed;

36. The interest, if any, to be awarded upon any sum ascertained to have been actually lent or awarded as aforesaid, shall be—

(*a*) the rate, if any, agreed upon between the parties, unless such rate be deemed by the Court to be unreasonable; or

(*b*) if such rate be deemed by the Court unreasonable, or if no rate was agreed upon such rate as the Court deems reasonable;

Provided always that—

(*a*) all payments already made by or on behalf of the debtor to the creditor, and all profits of any kind whatever enjoyed or realized by the creditor in satisfaction of the debt shall be brought to account, and credited, as far as they go, in cancelment first of the interest, if any, due at the rate allowed by the Court at the time or times at which such payments were made or such profits enjoyed or realized, and next in reduction of the principal amount of the debt;

but payments, etc., already made to be deducted;

(*b*) if the agreement between the parties expressly so provides, no interest shall be allowed;

and interest not to be allowed if agreement so provides;

(*c*) compound interest shall not in any case, be allowed;

and compound interest not to be allowed;

(*b*) the amount of interest received or to be received by the creditor shall not in any case exceed, in the aggregate, the amount of the principal debt;

and aggregate amount of interest to not exceed the principal;

(*c*) if the debt, or any portion thereof, was not contracted by the person from whom the creditor seeks to obtain recovery, but by such person's father or other ancestor, the said person shall be called upon to state whether he is willing to accept the full responsibility for such debt, or for such portion thereof; and if he accepts such responsibility, shall be held liable for the full amount payable on account of such debt or of such portion thereof, subject to the other provisions of this Act, or of any law for the time being in force relating to liability for ancestral debts; but if he declines to accept such responsibility, shall be held liable only for the principal amount of such debt, or of such portion thereof with interest up to the date of the death of the person who incurred such debt or such portion thereof, if such person was related to him in the first degree, and otherwise only for the principal amount of such debt or of such portion thereof.

and in the case of ancestral debts interest to be disallowed or limited.

37. It shall be competent to any agriculturist at any time to sue for an account of monies respectively lent or advanced to or paid for him by a creditor and paid by him to such creditor, and for a decree determinative of the amount, if any, still payable by him to such creditor. Bombay Bill I, sec. 8.

Agriculturist debtors may sue for accounts and settlement of amount of their debts.

When any such suit is brought, the amount payable by the plaintiff shall be determined under the same rules as would be applicable, if the creditor had himself sued for recovery of the debt; and the provisions of Chapter XXIII of the Code of Civil Procedure relating to payment into Court shall be applicable as if the plaintiff were a defendant in a suit to recover the debt, and the defendant the plaintiff in such suit.

Amount of debts in such cases to be determined according to foregoing provisions.

In any decree passed under this section, the Court may order that the amount due shall be paid by instalments, with or without interest.

Decree may provide for payment by instalments.

The plaintiff may pay the amount of the decree, or the amount of each instalment fixed by the decree as it falls due into Court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

Execution of decrees under this section.

38. At any time after a decree has been passed under which any money is recoverable from an agriculturist, the Court may, whether in the course of execution of the said decree or otherwise—

Part payment and discharge.

(*a*) direct the payment of a portion of the amount decreed, and after satisfying itself as to the means of the debtor and other claims upon him, if any, and of his inability to pay the balance, grant him a discharge from such balance; or

(*b*) if the debtor's liabilities amount to R50 direct proceedings to be taken with respect to him as if he had applied to be declared an insolvent under Part V of this Act

C. P. C., sec. 210.

Payments by instalments.

39. The Court may, at any time, direct that the amount of any such decree or such portion of the same as aforesaid, shall be paid by instalments with or without interest.

The Court may, when such instalments do not extend over a period longer than seven years, direct that they, or any of them, shall be recovered by the Collector as a revenue demand and paid to the decree-holder.

Arrest and imprisonment for debt abolished.

40. Except as provided in section 60 of this Act, no agriculturist shall be arrested or imprisoned on account of debt.

Bombay Bill I., sec. 9.

Land exempted from attachment and sale unless specifically pledged.

41. No agriculturist's land shall be attached or sold in execution of any decree or order unless it has been specifically pledged as security for the repayment of the debt to which such decree or order relates, and the mortgage lien still subsists.

Bombay Bill II., sec. 5.

Ancestral debt.

42. If, upon application being made for the execution of a decree for the payment of money against an agriculturist, it appears that the person against whom execution is sought is not the person made liable by the decree for the amount thereof, but the heir of such person, the amount recoverable under the decree shall be determined by the court in accordance with the Provisions of clause (*e*) of section 36 of this Act.

PART V.

Of Insolvency.

Chapter XX of the Civil Procedure Code not to apply to agriculturists.

43. Nothing in Chapter XX of the Code of Civil Procedure shall apply to any judgment-debtor who is an agriculturist.

Bombay Bill I., sec. 11.

Power to apply to be declared an insolvent.

44. Any agriculturist who is in debt and whose debts amount to fifty rupees or upwards, and any creditor who claims a sum of not less than fifty rupees from any agriculturist, and any two or more creditors who claim an aggregate sum of not less than the said amount from any agriculturist may apply in writing to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place in which such agriculturist resides, to declare such agriculturist an insolvent.

Every such application shall be subscribed in the manner prescribed in Section 10.

Bombay Bill I., sec. 12.

Contents of application by debtor.

45. If such application is made by the debtor it shall set forth —

(*a*) the amount and particulars of all pecuniary claims against him;

(*b*) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him.

(*c*) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

(*d*) the place or places in which such property is to be found; and

(*e*) his willingness to put at the disposal of the Court all such portion thereof as is by law liable for debt.

Bombay Bill I., sec. 13.

Contents of application by creditor.

46. If such application is made by a creditor or creditors, it shall set forth—

(*a*) the name and residence of the alleged debtor;

(*b*) the amount and particulars of his or their claims against the alleged debtor;

(*c*) the name and residence of any other person to whom the alleged debtor is believed to be indebted; and

(*d*) the grounds on which it is sought to have the alleged debtor declared an insolvent.

Bombay Bill I., sec. 16.

Notice to issue on debtor's application.

47. When the application is made by the debtor, the Court shall cause a copy thereof together with a notice of the time and place at which it will be heard, to be stuck up in court and to be served on each creditor named therein.

48. If upon perusal of an application made by a creditor or creditors, and after such examination of the applicant, or of any of the applicants, as the Court thinks fit, the Court deems that there is not sufficient *primâ facie* reason to believe that the alleged debtor is in insolvent circumstances, it may reject the application.

Creditor's application how to be dealt with.

If the Court deems that there is such reason, it shall fix a day for the alleged debtor to produce a statement, verified in the manner prescribed in Section 10 of this Act, setting forth the particulars specified in clauses (*a*), (*b*), (*c*) and (*d*) of Section 45, and to show cause why he should not be declared an insolvent, and shall cause a copy of the application, with a notice in writing of the time and place at which such cause is to be shown, to be served on the said debtor.

49. In the case contemplated by section 45, or by Section 46, the Court may, by proclamation or otherwise, as it thinks fit, publicly invite the appearance on the day fixed of all persons having claims against the debtor.

General invitation to other claimants.

50. If, at any time after an application has been made, the Court is satisfied that the debtor has already removed, concealed, or destroyed, or is about to remove, conceal, or destroy any books, papers or property, with the intent to avoid examination in respect of his affairs, or otherwise to delay or embarrass the insolvency proceedings, the Court may, by warrant, cause any books, papers, or property in the possession of such debtor to be attached and to be safely kept so long as the Court directs.

Attachment in certain cases.

51. On the day fixed for hearing the application, the Court shall examine the alleged debtor, in the presence of such of the creditors as appear, as to his circumstances and present or future means of payment, and shall hear any creditors opposing the application.

Procedure at first hearing.

52. If the Court is satisfied that the debtor's liabilities amount to Rs. 50 or upwards, and that he is in insolvent circumstances, it shall declare him to be an insolvent.

Declaration of insolvency.

53. Upon such declaration of insolvency, the Court shall proceed, upon such day as it may fix, to hear such evidence as the alleged creditors may produce regarding the amount and particulars of their respective claims, and any reply and evidence which the insolvent may offer in opposition thereto, and to ascertain the available assets of the insolvent.

Inquiry into debts and assets.

The Court shall determine, in accordance with Sections 33 to 36 (both inclusive), the amount of the insolvent's several debts, and shall frame a schedule specifying such debts, the names of the persons to whom they are due, and the order in which they are payable, and also the available assets of the insolvent.

A copy of such schedule shall be stuck up in the Court-house.

54. Any person claiming to be a creditor of the insolvent who has not appeared during the previous proceedings may, within one month from the publication of the schedule, apply to the Court for the amendment of the schedule by the insertion of his name and claim therein. If the Court is satisfied that he was prevented by unavoidable causes from previously appearing, it shall hear any evidence the applicant may produce and the defence of the insolvent, and then comply with or reject the application.

Amendment of schedule.

Any creditor mentioned in the schedule may, within one month from the publication thereof, apply to the Court for an order altering the schedule so far as regards the amount, nature, particulars or precedence of his own debt or that of another creditor, or striking out the name of another creditor. The Court, after hearing the insolvent and any other creditors concerned, shall comply with or reject the application.

Any creditor mentioned in the schedule may, within one month from the publication thereof, apply to the Court for the addition to the schedule of any available assets mentioned therein, and the Court, after hearing the applicant and the insolvent and any other parties concerned, shall comply with or reject the application. The Court may, at any time, of its own motion or on the application of the insolvent, so amend the schedule.

Fraudulent transfers.

55. The Court may, at any time, annul any transfer of the insolvent's property, or of any part thereof, which shall be shown to have been made by the insolvent with intent to defraud his creditors or to give an unfair preference to any of them, and may direct that the property so transferred shall be entered in the schedule as available assets and dealt with accordingly.

Liquidation of debts.

56. Upon the final settlement of the schedule of debts and assets, the Court shall proceed—

(a) to pay debts, fines, and penalties (if any) due by the insolvent to Government;

(b) to pay such costs of the insolvency proceedings as may be due under any rule made by the Local Government under Section 85 of this Act;

(c) to distribute the balance of available assets among the scheduled creditors rateably according to the amounts of their respective debts, or according to any order of preference fixed in the schedule.

Conversion of moveable property into money.

57. In order to make the payments specified in Section 56, the Court may convert into money such portion of the available moveable property other than money as it thinks fit.

Specific properties may be assigned to particular creditors;

58. In order to make the distribution required by clause (c) of the said section, the Court may, in its discretion, assign specific properties at such respective valuations as it deems equitable, to individual creditors, in lieu of converting the same into money.

or their annual proceeds devoted to payment of insolvent's liabilities.

The Court may likewise direct payment to be made by the insolvent by instalments out of the annual proceeds of specific properties, in lieu of so assigning or converting the same.

Powers of Court if assets insufficient.

59. If the debts cannot be fully liquidated in manner hereinbefore provided, the Court may—

(a) direct that the balance be paid by the insolvent by instalments out of the annual proceeds of his immoveable property; or

(b) direct that a portion of such balance be so paid and grant the insolvent an absolute discharge as to the remainder; or

(c) grant the insolvent an absolute discharge as to the whole of such balance.

Recovery of instalments.

60. When the instalments fixed under Section 58 or 59 do not extend over a period longer than seven years, the Court may direct that they, or any of them, shall be recovered by the Collector as a revenue demand to be levied and paid to the creditor.

Until such instalments have been paid—

(a) the property shall not be transferable by the insolvent or his heirs; and

(b) the insolvent or his heirs shall not receive a final discharge with respect to any balance of such instalments;

(c) the insolvent or his heirs shall be liable to be arrested and imprisoned in the civil jail for a term which may extend to one year, in the event of their fraudulently neglecting or refusing to cultivate, or let for hire or cultivation, as the case may be, any or all of the said property:

Provided that the insolvent or his heirs may at any time pay up the full amount of any instalments due, and shall thereupon receive a final discharge.

Procedure in cases of fraud.

61. If, at any time previous to the grant of a final discharge, it is shown to the satisfaction of the Court that in the course of the insolvency proceedings—

(a) the debtor has wilfully made any false statement as to the debts due by him, or as to the property belonging to him, whether in possession or expectancy or held for him in trust, or has fraudulently concealed or removed any property; or

(b) a creditor has wilfully made any false statement as to the amount, particulars or precedence of his claim, whether such statement affect the debtor or other creditors; or

(c) either debtor or creditor has concealed any fact material to the issue, or committed any other act of bad faith regarding the matter in issue;

the Court may send the offender to a Magistrate to be dealt with according to law.

PART VI.

OF CONCILIATION JUDGES.

Appointment of Conciliation Judges.

62. The Local Government may from time to time—

(*a*) appoint any person to be a Conciliation Judge, and

(*b*) cancel any such appointment.

Every Conciliation Judge so appointed shall exercise his functions under this Act, at such place and in respect of matters affecting agriculturists residing within such local limits as the Local Government shall from time to time determine.

Disputes may be brought before Conciliation-Judges.

63. When any dispute arises between two or more parties one of whom is an agriculturist as to any matter within the cognizance of a Civil Court, or when any decree to which an agriculturist is a party passed before the date when this Act comes into force has remained unexecuted, (1) any party to such dispute or decree may apply to the Conciliation Judge having jurisdiction in the place where the said agriculturist resides, or (2) both or all the parties may jointly so apply.

Procedure thereupon.

64. If the application be made by one of the parties only, the Conciliation Judge shall take down, or cause to be taken down, in writing, a general statement of the applicant's contention, and shall thereupon by summons, or by such other means as he deems fit, invite the person against whom such application is made to attend before him upon a day to be fixed for this purpose, on which day he shall direct the applicant to be also present.

Days for attendance may be from time to time postponed.

If the said person fails to appear on the day first fixed, the Conciliation Judge may, if he thinks fit, from time to time extend the period for his appearance.

When all parties appear, Conciliation Judge to endeavour to reconcile them.

65. Whenever all the parties are present the Conciliation-Judge shall call upon each in turn to explain his contention regarding the matter in dispute or the claim under the decree, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit the question at issue between them to arbitration.

Conciliation-Judge to hear statements of witnesses, etc.

66. The Conciliation Judge shall hear the statement of any witness and peruse any book of account or other document produced by the parties and if any party or witness shall consent in writing to affirm any statement upon oath or solemn affirmation in any form not repugnant to justice or decency, and not purporting to affect any third person, shall arrange for such oath or solemn affirmation being duly taken in the presence of all the parties.

Procedure on conclusion.

67. If on the day on which the case is first heard by the Conciliation Judge, or on any subsequent day to which he may adjourn the hearing, the parties shall agree to terms for the settlement of the matter in dispute, the said terms shall be forthwith embodied in a decision, or in an agreement for reference to arbitration, or in a *razinama*, as the case may require, which shall be read and explained to the parties, and shall be signed or attested by the marks of the Conciliation Judge and of the parties, or their representatives respectively.

Decision duly signed or attested to be forwarded to Civil Court, and

68. When a decision has been so framed and signed or attested, the Conciliation Judge shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides.

to be filed in the Civil Court and given effect to as a decree.

The Court which receives the decision shall order to it to be filed, and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

Certificate to be given to applicant if conciliation fails.

69. If the person against whom any application is made before a Conciliation Judge cannot be found, or if he refuses or neglects, after such period as the Conciliation Judge thinks reason-

fails, the Conciliation Judge shall on demand give to the applicant, or, in the case of a joint application to either applicant, a certificate under his signature to that effect.

Suit, etc., not to be entertained by Civil Court unless such certificate is produced.

No suit and no application for execution shall be entertained in any Civil Court in respect of any matter or decree which ought under the foregoing provisions to have been brought before a Conciliation Judge, unless the plaintiff or applicant first produces a certificate as aforesaid.

PART VII.

Of Pleaders.

Pleaders to be excluded.

70. No pleader shall be permitted to appear on behalf of any party to a case before a Village Munsif or a Conciliation Judge, or in any case cognizable by a Subordinate Judge under section 4 of this Act, in which the value or amount of the claim does not exceed one hundred rupees:

Provided that—

(*a*) any party to any such case may be permitted on reasonable cause being shown to the satisfaction of the Conciliation Judge, Munsif or Subordinate Judge to employ any relative, servant or dependant, who is not, and has not previously been a pleader, or a mukhtyar or law-agent, to appear either conjointly with or in lieu of such party;

(*b*) a Subordinate Judge may admit a pleader to appear before himself for any party in any such case as aforesaid in which for special reasons, which he shall record at the time in writing, he deems it desirable that the party should have such assistance;

Appointment of counsel for debtor in certain cases.

(*c*) in any case in which a creditor is so permitted to appoint a pleader to appear on his behalf, and the Subordinate Judge is of opinion that the debtor is not in such pecuniary circumstances as to admit of his obtaining similar counsel, the Subordinate Judge may, with the consent of the debtor, direct the Government Pleader, or some other competent person, to undertake his defence.

If in the case provided for in clause (*a*) of this section a relative, servant or dependant appears in lieu of a party, he shall be furnished by him with a *mukhtyárnáma* defining the extent to which he is empowered to act.

PART VIII.

Registration by Village Registrars.

Appointment of Village Registrars.

71. The Local Government may appoint such persons as it thinks proper, whether public officers or not, to be Village Registrars.

Each such person shall be Village Registrar for such local area as the Local Government shall prescribe.

The Local Government may appoint any person by name or in virtue of his office to exercise all or any of the powers conferred on it by this section.

Instruments to which agriculturist is a party not to be deemed valid unless executed before a Village Registrar.

72. No instrument executed after the passing of this Act, to which an agriculturist residing in any place in which this Act is in force is a party, shall be received in any Court of Justice, or by any person having by law or consent of parties authority to receive evidence, as creating, modifying, transferring, or extinguishing, or purporting to create, modify, transfer, or extinguish any right or obligation:

or as evidence in any civil proceeding; or shall be acted upon in any such Court, or by any such person as aforesaid, or by any public officer.

unless such instrument is written by, or under the superintendence of, and is attested by, a Village Registrar.

Such instruments to be written by or under the superintendence of a Village Registrar and executed in his presence.

73. When any persons, one or more of whom is an agriculturist, desire to execute any instrument, they shall present themselves before the Village Registrar appointed by the Local Government for the area in which the said agriculturist or any one of the said agriculturists resides, who after satisfying himself in such manner as he deems fit as to the identity of the parties, and receiving from them the prescribed fee, and the stamp, if any, which may be necessary, shall write the instrument, or cause the same to be written under his superintendence, and require the parties to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall be attested by the Village Registrar, and also, if any of the parties thereto is unable to read and write, by two respectable witnesses.

Registration of instruments by Village Registrars.

74. Every Village Registrar shall keep a register of instruments executed before him in such from as shall from time to time be prescribed by the Inspector-General of Registration under section 77 of this Act.

As soon as any instrument has been completely executed before a Village Registrar, he shall make, or cause a copy of it to be made in his register. He shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties, if there be more than one.

Previous to delivery the original instrument and each such copy shall be endorsed under the Village Registrar's signature with the date of registration, the name and residence of the Village Registrar, and the volume and page of the Register in which the instrument has been registered.

Consideration to be fully stated in every instrument executed before a Village Registrar.

75. In every instrument written by or under the superintendence of Village Registrar, the amount and nature of the consideration shall be fully stated.

The Village Registrar shall also endorse the instrument with a note, under his signature recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

If the instrument is to be executed in supersession, or partly in supersession of a previous instrument, such instrument shall be produced before the Village Registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village Registrar under his signature for identification.

Registration under this Act to be deemed equivalent to registration under the Indian Registration Act, 1877.

76. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village Registrar, but has been otherwise executed, shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

Village Registrars to be subordinate to the Inspector-General of Registration.

77. The Inspector-General appointed under the said Act shall exercise, by himself and through his subordinates, a general superintendence over all Village Registrars and shall have power from time to time to make rules consistent with this Act for regulating their proceedings and for providing for the custody of their records.

Penalty if person not being a Village Registrar writes any instrument.

78. Any person who, not being a Village Registrar, writes otherwise than by direction and under the superintendence of a Village Registrar, any instrument which this Act requires to be executed before a Village Registrar, shall be punished for each such offence, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Mortgages, etc., to be valid only when written and registered.

79. No mortgage, lien or charge of or upon any land belonging to an agriculturist shall be valid unless it is created by an instrument in writing signed by the person creating such mortgage, lien or charge.

Exemption of instruments to which Government or any officer of Government is a party.

80. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party to be executed before a Village Registrar.

PART VIII.

Of Receipts and Statements of Account.

Agriculturists to be entitled to written receipts,

81. Every agriculturist who makes any payment of money in liquidation of debt shall be entitled to receive at the time of such payment a written receipt from the person to whom such payment is made.

If such payment is made under any instrument written, under section 73 of this Act, by a Village Registrar, the said receipt shall, if the agriculturist so require, be endorsed on the copy of the said instrument furnished to him under section 74 of this Act.

and to own annual statement of account,

82. Any agriculturist by whom any money is due under any instrument shall be entitled to receive from the person claiming under such instrument, within one month after the date on which by local custom annual accounts are balanced, a statement of his account up to that date.

The Local Government may, by notification in the *Bombay Government Gazette*, declare what date shall in any district or portion of a district be taken to be the date on which annual accounts are balanced for the purpose of this section.

and to have his account made up from time to time in a pass-book.

83. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book, and to require from time to time that his account up to date be written therein and attested by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent to the grant of a receipt for the amount so entered.

Penalty for contravention of sections 81—83.

84. Any person who, in contravention of sections 81, 82 or 83 of this Act, refuses or neglects to give a receipt, or a statement of account, or a pass-book, or to write, or cause to be written any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

PART IX.

Miscellaneous.

Local Government to frame rules.

85. The Local Government may from time to time make rules consistent with this Act—

(*a*) regulating the proceedings of Village Munsifs and Conciliation Judges in matters not provided for by this Act;

(*b*) fixing the charges to be made by Conciliation Judges for anything done by them under this Act;

(*c*) determining what record and accounts shall be kept by Conciliation Judges, and what returns shall be framed and furnished by them;

(*d*) regulating the appointment, suspension, dismissal, duties, and remuneration of Village Registrars, and prescribing the fees to be levied by them;

(*e*) generally for carrying out the provisions of this Act.

All such rules shall be published in the *Bombay Government Gazette*, and shall thereupon have the force of law.

Office Memorandum from C. BERNARD, Esq., Officiating Secretary to the Government of India, to the Legislative Department,—No. 711, dated Simla, the 23rd June 1879. No. 65.

The undersigned is directed to forward copies of the papers noted in the appended list, together with the revised Deccan Ryots Relief Bill, received from the Government of Bombay. The provisions of this Bill, the views of the Local Government, and Lord Cranbrook's despatch of the 26th December last, have been fully considered in the Home Department, who advise that before the Bill is introduced into the Legislative Council the following alterations be made therein, namely,—

A.— *Paragraph 3 of Section 1 of the Bill.*

The clause providing that the Act may be extended to other parts of the Bombay Presidency, outside the four districts named, should be omitted. It seems best that the important experiment in judicial administration now to be made should be confined within the limits of these four districts, and should not be extendable without fresh legislation.

B.—*Part III of the Bill, especially Section 20.*

The Civil Procedure Code (Act X of 1872), as about to be amended, should be retained as the procedure for the Judges and Sub-Judges' Courts to be established under the Bill, subject to exceptions and reservations as follows :

(1)—In every suit where it may seem possible to dispose of the case at the first hearing, the summons to defendants and witnesses shall issue for final disposal of the suit.

(2)—No case shall be decided *ex-parte*, except for special reasons to be recorded in writing by the presiding officer at the time.

(3)—An additional form of substituted service of summons, in the absence of defendant from his home, should be provided, whereby the summons could be left with the headman of the defendant's village, who would duly serve it on the defendant if he returned home, and would return it by post in one week, with endorsement of service or otherwise, to the court that issued it.

(4)—A provision analogous to Section 18 of the Bill should be made barring written statements in all cases of the Small Couse Court type, unless required by the court, or tendered with its permission.

(5)—Provision should be made for shortening the record in cases valued at less than ten rupees as in paragraph 1 of Section 17 and in paragraph 3 of Section 19 of the Bill.

C.—*Insolvency, Part V of the Bill.*

The twentieth Chapter of the Civil Procedure Code, as now to be amended, is to apply to the new Judges' and Sub-Judges' Courts in place of Part V of the Bill, subject to the following exceptions, namely,—

(1) that the insolvent's land shall not be saleable in insolvency, but may be subject to such partial alienation to creditors, or otherwise in the interest of the creditors, as the Collector may be able to arrange, for a period of not more than seven years from the date of declaration of insolvency :

(2) that a ryot be allowed to apply for insolvency without first becoming a judgment-debtor (*vide* Section 44 of the Bill *) :

(3) that the principle embodied in Section 52 of the Bill whereby a declaration of insolvency *must* be granted to any one really insolvent, shall be retained in such form as may seem best :

(4) that Section 58 of the Bill be re-drawn so as to provide for valuing moveable property by arbitration, and for preventing such property from being sold at great loss at auction sales, and that the section so re-drawn should be retained :

(5) that subject to the special modification No. 1 under this heading C., the insolvent whose debts cannot be fully liquidated from his moveable property, shall be in all cases absolutely discharged as to the whole of the balance of his debt, save in so far as arrangements may have been made for complete or partial liquidation from a part of the insolvent's land : and

* NOTE.—It is understood that the Civil Procedure Code Amendment Bill now before the Legislature will empower a judgment-creditor to apply that his judgment-debtor may be declared insolvent.

(6) that a Sub-Judge's power to commit fraudulent insolvents to prison, under Section 359 of the Civil Procedure Code, shall be limited to periods of—

three months for first grade Sub-Judges;
one month for second ditto ditto.

D.—*Part VIII, Registration by Village Registrars.*

The principle of this part is to be retained for the present; but Section 78 (penal clause) must be omitted; while Section 73 and certain other sections should be re-drawn. The Government of India in this Department feel some doubts about the provisions of this part, and are not yet finally decided to adopt all its sections.

E.—*Revision by High Court.*

Section 622 of the Civil Procedure Code, which provides for the power of revision by the High Court, is to be applicable to courts under the Bill.

F.—*Appeals.*

The principle of Section 30 of the Bill, barring all appeals, is to stand. But further provision for skilled supervision and inspection must be made in the Bill; and the Bombay Government should be specially addressed on this subject.

G.—*Village Munsifs.*

The provisions regarding Village Munsifs should be assimilated, as far as possible, to the Madras Regulation on the same subject, the Local Government being empowered to make rules for their procedure.

H.—*Special provisions in Part IV of the Bill.*

Sections 33, 36 and 37 of the Bill are to stand; Section 34 is to be omitted; and Section 35 should be altered so as to permit the court to refer either the principal, or the interest, or both, to the decision of arbitrators. Section 38 may stand subject to revision of the drafting.

J.—*Oaths Administration.*

The provision in Section 66 of the Bill, so far as concerns the administration of a special oath, may stand, as the Local Government set store by this part of the section.

K.—*Exclusion of Pleaders, Section 70 of the Bill.*

Pleaders should not be allowed to appear before Conciliation Judges or Village Munsifs. But they may be admitted in other courts, provided that the Judge shall not award pleader's costs in any case in which the value or amount of the claim does not exceed R100, unless he considers that professional advice was necessary to the proper prosecution of the suit.

L.—*Limitation Law.*

Limitation of three years should be raised to six years in the case of ordinary money bonds, and from six to twelve years in the case of registered bonds. It should be considered by the light of other Limitation Acts whether this provision should take retrospective effect and how far additional currency should be given to deeds already barred by the existing Law of Limitation.

M.—*Arbitration Courts.*

The Bombay Government should be invited to consider whether they desire to provide for Arbitration Courts in the way suggested by the Honourable Mr. Hope's note of the 29th May last.

2. The Governor General in Council in this Department recommends that the Bill, as received from the Government of Bombay, should be modified and re-drawn in accordance with the views expressed in this memorandum; that the Honourable Mr. Hope should be consulted in the course of such re-drawing; and that the Bill should be introduced in the Legislature as soon as the re-draft has been completed and approved by the Governor General in Council.

List of Papers.

Letter No. 2056, dated 18th April 1879, from Government of Bombay, with enclosures.
Letter No. 2248, dated 28th April 1879, from Government of Bombay, forwarding further papers.
Memoranda by the Honourable Mr. Hope, dated 8th May and 29th May 1879.

(72)

From D. FITZPATRICK, Esq., Secretary to the Government of India, Legislative Department, to the Chief Secretary to the Government of Bombay,—No. 780, dated Simla, the 26th July 1879. No. 66.

I am directed to forward herewith 30 copies of the Bill for the relief of indebted agriculturists in certain parts of the Deccan (with its Statement of Objects and Reasons), introduced into the Legislative Council of His Excellency the Governor General by the Honourable Mr. Hope, together with the papers noted in the margin, and to request that the opinions of the Government of Bombay, the Honourable the Judges of the High Court, and such of the local officers, not exceeding six in number, as the Government of Bombay think fit to consult thereon, may be forwarded to me, for submission to the Select Committee to which the Bill has been referred, before the 15th of September.

(a) 1. From the Honourable T. C. Hope, C.S.I., dated 26th April 1879, and enclosures.
(b) 2. Explanatory note by the Honourable T. C. Hope, C.S.I., dated 8th May 1879.
(c) 3. Further note by the Honourable T. C. Hope, C.S.I., dated 29th May 1879.
(d) 4. Statement by the Honourable T. C. Hope, C.S.I., regarding the trial of civil suits in the disturbed districts of the Bombay Presidency.
5. Statement showing the business of the Civil Appellate Courts in the disturbed districts of the Bombay Presidency.
6. Statement of the Poona Arbitration Courts, 1876—79.
(e) 7. Abstracts of Proceedings of the Council of the Governor General, dated the 17th and 18th July 1879.

2. I am also to request that the Bill and Statement of Objects and Reasons may be published in the *Bombay Government Gazette* in English and in such other languages as His Excellency in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. It will be seen from the report of the debate in Council on the 17th and 18th instant that, while the principles of the Bill are accepted, there has been some difference of opinion on certain points of detail. The authorities consulted will doubtless give these points their best consideration; but to some of them, as well as to one or two additional points which have not formed the subject of discussion in the Legislative Council, I am to invite special attention.

4. In the first place, there is the question as to the extent to which the present right of appeal should be curtailed. This question has been left, by paragraphs 31 to 34 of the Secretary of State's despatch of the 26th of December last, completely in the discretion of the Supreme Government and the Government of Bombay, and there has been some difference of opinion on it here.

The Bill, as it now stands, has, in accordance with the views of the Government of Bombay, been so drawn as to exclude appeals in all those classes of cases to which it applies; and the machinery provided for conducting the system of revision which is to take the place of appeal has been strengthened by the addition of a special Judge, who is to devote himself exclusively to superintending and controlling the working of the Act.

5. The Governor General in Council is of opinion that, looking to the arduous nature of the duties which the Act imposes on the Subordinate Judges and the large discretion it confer on them, the appointment of a special officer of this sort, who would ordinarily be chosen from the more experienced District Judges, is essential to the proper working of the system proposed; but the Governor in Council will observe that it has been questioned here whether any system of revision, even if worked under the control of the ablest Judge that could be chosen, would, in the case of all the suits dealt with by the Bill, be an adequate substitute for the present system of appeals. It has been argued that at all events in mortgage suits the right of appeal should be maintained, and the Government of India have determined to treat the question, in so far as lies in them, as an open one pending the receipt of your reply to this letter.

6. The provisions of the Bill to which I am next to invite attention are those contained in Section 13, regulating the mode in which account is to be taken in cases where it is found necessary to set aside an inequitable agreement into which an agriculturist has been inveigled. The corresponding provisions contained in the Bill submitted with your No. 2056, dated 18th April last, were found on examination to be on more points than one susceptible of various constructions. An attempt has been made in Section 13 of the present Bill to express what it is believed was intended, and it is for the Government of Bombay to say whether

(a) Printed at pages 101—128.
(b) Ditto 128—140.
(c) Ditto 141—144.
(d) Not printed.

(e) *Vide* pages 833 to 872, and 873 to 887 of the Supplement to *Gazette of India*, dated 2nd August 1879.

that attempt has been successful, or, if not, what modifications in the wordingof the section are required.

7. In connection with Section 13 of the Bill I am to invite attention to Sections 18 and 24, which go to relieve an heir from a portion of his ancestor's debt, though he may have inherited from that ancestor property sufficient to pay such debt. Similar provisions were contained in the Bill submitted with your predecessor's No. 308, dated 19th January 1878, and as the subject was one which the Bombay Legislature was competent to deal with, the letter from the Revenue, Agriculture and Commerce Department, No. 404, dated 1st July 1878, left it to be dealt with by that Legislature; but I am to say that, now that the question has come to be dealt with here and has been considered further and in more detail, the Governor General in Council is unable to see any ground on which such provisions can be supported.

The Governor General in Council cannot understand why, when the ancestor's debt has, under the ample powers contained in Sections 12 to 15 of the Bill, been fully inquired into and reduced to its just limits, the heir should not be bound to pay it to the extent of the property he has inherited. The obligation binding him to do so is, as observed by the Honourable Sayyad Ahmed in his speech, a matter of natural equity common to the English, Hindu and Muhammadan legal systems. Moreover, it is an obligation with the force of which the people of this country are perhaps more strongly impressed than those of any other country, and the sense of which, as observed in your predecessor's lette of the 6th April 1877, is "one of the best traits in their character."

8. For these reasons the Governor General in Council would be disposed to omit altogether the sections of the Bill referred to, and he is the more disposed to do so as he gathers from your predecessor's letter just cited that the Deccan Riots Commission, and the Government of Bombay in the year 1877, were opposed to any attempt to afford relief in this way.

The sections have been allowed to stand pending your reply to this letter; but I am to beg that, if the Governor in Council proposes to advocate their retention, you will submit for the consideration of the Select Committee a re-draft of them, providing in more detail for the various cases that may present themselves—cases, *e.g.*, where the date is secured by a mortgage, cases in which the ancestor's account has been for some time dealt with as incorporated in the heirs, cases where the heir has given a fresh bond, and so on.

9. In the chapter relating to village munsifs it will be seen that the main lines of the Madras system have been to some extent restored. It appears to the Governor General in Council that it is of the essence of that system that the qualification for the office of munsif should be based, not on literary attainments, but on social status and local influence; that accordingly the appointments should, as in Madras, be restricted to village headmen; and that as these must in many instances be illiterate persons, whose judgments could not be expected to stand the tests applied by our courts of revision, their decrees must, as in Madras, be made final, except when they are impugned on the ground of corruption or partiality.

If, unhappily, it should appear that the number of village headmen in the Deccan districts who can be trusted to decide petty suits without any regular check in the way of appeal or revision is inconsiderable, the proper conclusion seems to be that the village munsif system is scarcely suited to those districts, and it may be a question whether the provisions relating to it should not be altogether omitted from the Bill.

10. In connection with Chapter VIII, relating to registration, it has been suggested that the persons available in the Deccan for the post of village registrar are not always to be trusted. I am directed to mention this, but the point, I am to add, is one upon which the Government of Bombay are most competent to form an opinion.

11. The portions of the Bill relating to the procedure in civil suits and to insolvency were, in the draft submitted with your No. 2056, dated 18th April 1879, so drawn as in the opinion of the Governor General in Council to lead to an impression that the deviation from the ordinary law involved in them was more extensive than it in fact was. In the Bill as now drafted the safer and simpler course, as it appears to the Governor General in Council, has been taken of providing directly only for the particular points on which a deviation from the ordinary law seems unavoidable, and then enacting that as to the rest the ordinary law shall apply. It is hoped that in effecting this alteration in the form of the Bill no special provision has been omitted to which the Government of Bombay attach any considerable importance; but, however this may be, it should be borne in mind that, even in their present shape, the portions of the Bill now referred to have met with considerable opposition here, and that if

any further deviations from the ordinary law are introduced, they will prove so many additional obstructions to the progress of the Bill through its remaining stages.

12. Regarding the exclusion of pleaders (as provided for in the Bill submitted by you) in suits not exceeding one hundred rupees in value or amount, there has been much discussion here, and the course adopted in Section 69 of the present Bill, of empowering the courts to refuse costs has, I am to say, been adopted with a view to a compromise between conflicting opinions.

13. The only other matters to which I am to refer in connection with the Bill are the suggestions contained in Mr. Hope's note of the 29th of May last. The first of these suggestions—that as to the extension of the period of limitation in debt cases—is supported by a considerable body of authority; the arguments on which it is based appear to the Governor General in Council to be sound; and the Government of Bombay, though not supporting it themselves, have expressed no strong opinion against it. It has accordingly been provisionally adopted in the Bill.

14. Mr. Hope's other suggestion, that the Arbitration Courts which have established themselves at Poona and elsewhere should be recognized and have a certain status and position in our judicial system accorded to them, and that a mode of reviewing their decisions should be provided, is one which involves not only the general questions as to the desirability of setting up a body of standing arbitrators and as to the propriety of allowing awards to be revised on their merits, but also the question as to the expediency of recognizing in the manner proposed the particular bodies referred to. These are questions on which the Governor General in Council deems it undesirable to come to any conclusion pending the receipt of your reply, especially as it appears that the Government of Bombay had provisions identical with those now proposed submitted to them for their consideration in Mr. Hope's draft Bill, and, for some reason not stated in the correspondence, did not think fit to adopt them. For this reason no provision regarding Arbitration Courts has been made in the present Bill.

15. I am, in conclusion, to invite attention to the question referred to in the last paragraph of the letter from the Home Department No. 222, dated 26th February 1879, as to the possibility of making improvements in the revenue system now prevailing in the Deccan districts—a question which, you will observe, was discussed by several Honourable Members in the recent debate. That question, however, should be kept separate from those connected with the present Bill, and any communication you may have to make on it should be addressed to the Secretary for the Home, Revenue and Agricultural Department.

THE DECCAN AGRICULTURISTS RELIEF BILL, 1879. No. 67.

CONTENTS.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

SECTIONS.

12. History of transactions with agriculturist debtors to be investigated.
13. Mode of taking account.
14. Interest to be allowed.
15. Reference to arbitration in certain cases.
16. In the case of ancestral debts, interest to be disallowed or limited.
17. Agriculturist debtors may sue for accounts. Amount of debts in such cases to be determined according to foregoing provisions.
18. Decree may provide for payment by instalments.

SECTIONS.

Execution of decrees under this section.
19. Payment into court in cases under section 17.
20. Power to discharge judgment-debtor. Power to direct institution of insolvency proceedings.
21. Power to fix instalments in execution.
22. Arrest and imprisonment for debt abolished.
23. Land exempted from attachment and sale unless specifically pledged.
24. Ancestral debt.

CHAPTER IV.

OF INSOLVENCY.

SECTIONS.

25. Subordinate Judges to have jurisdiction in agriculturists' cases.
26. Agriculturist may apply for adjudication in cases not provided for by Code.
27. Modification of section 351 of the Code.
28. Receiver.
29. Proof of debts.
30. Power to make over moveable property to creditor at valuation.

SECTIONS.

31. Immoveable property not to vest in receiver but may be managed for benefit of creditors.
32. Secured debts.
33. Insolvent incompetent to sell, etc., property dealt with under sections 31 and 32.
34. Scheduled debts discharged.
35. Limitation to powers of Subordinate Judges under section 359 of the Code.

CHAPTER V.

OF VILLAGE-MUNSIFS.

SECTIONS.

36. Appointment of Village-Munsifs.
37. Suits triable by them. Jurisdiction of other Courts excluded.

SECTIONS.

Proviso.
38. Special Judge's power of revision.
39. Power of Local Government to make rules.

CHAPTER VI.

OF CONCILIATION.

SECTIONS.

40. Appointment of Conciliators.
41. Matters which may be brought before Conciliator.
42. Procedure thereupon. Day for attendance may from time to time be postponed.
43. When all parties appear, Conciliator to endeavour to reconcile them.
44. Conciliator to hear statement of witnesses, etc.

SECTIONS.

45. Any agreement arrived at to be reduced to writing.
46. Procedure when agreement finally disposes of case.
47. Procedure where agreement is for reference to arbitration.
48. Certificate to be given to applicant if conciliation fails.
49. Suit, etc., not to be entertained by Civil Court unless such certificate is produced.

50. Local Government to frame rules.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

SECTIONS.

51. Special Judge.
52. District Judge may withdraw case from Subordinate Judge, or sit with Subordinate Judge as a Bench for trial of any case.

SECTIONS.

53. Appointment of Assistant or Subordinate Judge to aid Special Judge.
54. Of revision.

CHAPTER VIII.

Registration by Village-Registrars.

CHAPTER IX.

Of Receipts and Statements of Account.

CHAPTER X.

Legal Practitioners.

CHAPTER XI.

Miscellaneous.

A Bill for the Relief of Indebted Agriculturists in certain parts of the Deccan.

Preamble.

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Deccan from indebtedness; It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title.

1. This Act may be cited as "The Deccan Agriculturists' Relief Act, 1879:"

Local extent and commencement.

It extends only to the districts of Poona, Satara, Sholapur and Ahmednagar, and it shall come into force on the first day of October, 1879.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"Agriculturist."

(1) "agriculturist" means a person who earns his livelihood wholly or principally by agriculture:

"Money." (2) "money" includes grain and any other agricultural produce:

"Special Judge." (3) "special judge" means the officer appointed under section fifty-one.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

raft, s. 4.

Application of this chapter.

3. The provisions of this chapter shall apply to—

(a) suits for an account instituted on or after the first day of October, 1879, by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

(b) suits of the descriptions next hereinafter mentioned and instituted on or after the same date—

(1) when such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or

(2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or

(3) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees in amount or value, and the parties agree that such provisions shall apply.

The descriptions of suits referred to in clause (b) are the following (namely):—

suits of the nature cognizable by courts of Small Causes, and

suits between mortgagors, being agriculturists, and mortgagees for the foreclosure or redemption of the mortgage, for the enforcement of the mortgage lion or for the possession of the property mortgaged.

Certain suits to be instituted in Courts of first class Subordinate Judges.

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have jurisdiction in the same local area, every suit referred to in section 3, clause (b), to be instituted in such local area shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

Subordinate Judges not to act as Judges of Small Cause Courts.

5. Notwithstanding anything contained in the Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall, while this Act continues in force, be invested with the jurisdiction of a Judge of a Court of Small Causes; and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of October, 1879, to have been withdrawn.

draft, s. 4.

Jurisdiction of Subordinate Judge and Small Cause Court.

6. The Local Government may from time to time by notification in the local Gazette direct that any class of suits which a Subordinate Judge would be precluded from hearing by section twelve of Act XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature*) shall be heard and determined by him and not otherwise, and may by a like notification cancel any such direction.

draft, s. 12.

Summons to be for final disposal of suit.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

Service of summons.

8. If the officer employed to serve a summons on a defendant cannot find such defendant and there is no agent empowered to accept the service of the summons in his behalf, nor any person on whom the service can be made, the serving-officer may, instead of proceeding in manner prescribed by section 80 of the Code of Civil Procedure, leave such summons for service with the patel of the defendant's village.

A patel with whom a summons is left under this section shall, if he within one week from the date on which the summons is so left finds the defendant in the village, serve such summons on the defendant in manner prescribed by section 79 of the said Code, endorse the same or cause the same to be endorsed in manner prescribed by section 81 of the said Code, sign such endorsement and return the summons by post or otherwise to the Court.

An endorsement made on a summons under this section shall be *primâ facie* proof of the acts stated therein, and the Court shall take judicial notice of the signature thereto.

No suit to be heard *ex-parte*.

9. No suit shall be heard *ex-parte*, unless the Court, for reasons to be recorded in writing, thinks that it ought to be so heard. Bombay draft, s.15.

In any suit which the Code of Civil Procedure directs to be heard *ex-parte*, but whice the Court does not think ought to be so heard, the Court shall adjourn the hearing and take steps to secure the attendance of the defendant by the issue of a fresh summons or of a warrant of arrest.

Written statements.

10. In suits of the nature cognizable by Courts of Small Causes no party shall be entitled to file a written statement without the permission of the court. Bombay draft, s. 18. Act XI of 1865, s. 18.

Record of evidence.

11. When the subject-matter of any suit does not exceed ten rupees in amount or value, it shall not be necessary to take down the evidence or make a memorandum thereof in manner provided by the Code of Civil Procedure; but in cases where the evidence is not so taken down and no memorandum is so made, the substance of the evidence shall be stated in the judgment Bombay draft, s. 17.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

History of transactions with agriculturist debtors to be investigated.

12. When any suit is brought for the recovery of money alleged to be due on account of money lent or advanced to, or paid for, the defendant, or as the price of goods sold or on an account stated, or on a written or unwritten engagement for the payment of money, or for the foreclosure of a mortgage, or for the possession of mortgaged property, and the defendant or any one of the defendants, not being merely a surety of the actual debtor, is an agriculturist, Bombay draft, ss. 34 and 36.

and when any suit is brought for the redemption of a mortgage and the plaintiff or any one of the plaintiffs is an agriculturist,

the Court shall, if the amount of the creditor's claim is disputed, enquire into the history and merits of the case, from the commencement of the transactions between the parties out of which the suit has arisen, first, with a view of ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise; and secondly with a view (if necessary) to taking an account between the parties in manner hereinafter provided.

When the amount of the claim is admitted, and the Court sees no reason to doubt the truth of such admission, the Court shall not be bound so to enquire, but may do so if it thinks fit.

When the Court sees reason to doubt the truth of such admission, it shall be bound to enquire as aforesaid.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

Mode of taking account.

13. When the Court enquires into the history and merits of a case under section twelve it shall, if it considers any agreement between the parties as to interest or the profits of mortgaged property or determining in any way the manner of taking the account fair and equitable, give effect to such agreement and take the account on the footing thereof; but, if it does not consider such agreement fair and equitable, it shall, notwithstanding the same, Bombay draft, ss. 34 and 36.

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

determine the amount due according to the following rules (that is to say):—

(*a*) separate accounts of principal and interest shall be taken:

(b) in the account of principal there shall be debited to the debtor only such money as may from time to time have been actually received by him or on his account from the creditor:

(c) in the account of interest there shall be debited to the debtor monthly simple interest on the balance of principal for the time being outstanding at the rate allowed by the Court as hereinafter provided:

(d) all payments by or on account of the debtor, and all profits or advantages of every description received by the creditor in the course of the transactions, shall be credited, first, on account of interest; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal:

(e) the accounts of principal and interest shall be made up to the date of suit, and the aggregate of the balances (if any) of both such accounts against the debtor on that date shall be deemed to be the amount due, except when the balance of the interest account exceeds that of the principal account, in which case double the latter balance shall be deemed to be the amount due.

raft, ss. 34

Interest to be allowed.

14. The interest to be awarded in taking an account according to the rules set forth in section thirteen shall be—

(a) the rate, if any, agreed upon between the parties, unless such rate is deemed by the Court to be unreasonable; or

(b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, such rate as the Court deems reasonable:

Provided that, in any case in which the parties have agreed that the profits of mortgaged property shall be taken by the mortgagee in lieu of interest and such agreement has been set aside under section thirteen, the rate of interest to be allowed shall be nine per cent. per annum.

lraft, s. 35.

Reference to arbitration in certain cases.

15. Instead of enquiring into the history and merits of a case under section twelve, or if, upon so enquiring, the Court is unable to satisfy itself as to the amount which should be allowed on account of principal or interest or both, the Court may, of its own motion, direct that the question be referred to arbitration.

If the parties are willing to nominate arbitrators, the arbitrators shall be nominated by hem in such manner as may be agreed upon between them: if the parties are unwilling to nominate arbitrators or cannot agree in respect of such nomination, the Court shall appoint any three persons it thinks fit:

Provided that if both parties reside in the same village, town or city, and, in the opinion of the Court, three fit persons can be found among the residents of such village, town or city, it shall appoint residents of such village, town or city.

The provisions of sections 508 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

draft, s. 36.

In the case of ancestral debts interest to be disallowed or limited.

16. If the debt, or any portion thereof, was not contracted by the person from whom the creditor seeks to obtain recovery, but by such person's father or other ancestor, the said person shall be called upon to state whether he is willing to accept the full responsibility for such debt or for such portion thereof;

and, if he accepts such responsibility, shall be held liable for the full amount payable on account of such debt, or of such portion thereof subject to the other provisions of this Act, or of any law for the time being in force relating to ancestral debts;

but if he declines to accept such responsibility, he shall not be held liable for more than the principal amount of such debt, or of such portion thereof, with interest up to the date of the death of the person who incurred such debt, or of such portion thereof, if such person was related to him in the first degree, and otherwise only for the principal amount of such debt or of such portion thereof.

ay draft, s. 37.

Agriculturist debtors may sue for accounts.

17. Any agriculturist may sue for an account of monies lent or advanced to or paid for him by a creditor or due by him to such creditor as the price of goods sold or on a written or unwritten engagement for the payment of money and of monies paid by him to such creditor and for a decree declaring the amount, if any, still payable by him to such creditor.

When any such suit is brought, the amount payable by the plaintiff shall be determined under the same rules as would be applicable if the creditor had himself sued for recovery of the debt.

Amount of debts in such cases to be determined according to foregoing provisions.

18. A decree passed under section seventeen may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt. Bombay draft, s. 37.

Decree may provide for payment by instalments.

Execution of decrees under this section.

19. The plaintiff in any suit instituted under section seventeen may at any stage of such suit deposit in court such sum of money as he considers a satisfaction in full of the defendant's claim against him. Bombay draft, s. 37.

Payment into court in cases under section 17.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

20. When a decree has been passed, whether before or after this Act comes into force under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may whether in the course of execution of the said decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of a portion of the same, and grant him a discharge from such balance. Bombay draft, s. 38.

Power to discharge judgment-debtor.

When the sum payable under the decree amounts to fifty rupees or upwards, or when there are other claims against the debtor, the Court may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

Power to direct institution of insolvency proceedings.

21. The Court may at any time direct that the amount of any decree against an agriculturist or the portion of the same which it directs under section twenty to be paid, shall be paid by instalments with or without interest. Bombay draft, s. 39.

Power to fix instalments in execution.

22. Except as provided in the Code of Civil Procedure, section 359, no agriculturist shall be arrested or imprisoned on account of debt. Bombay draft, s. 40.

Arrest and imprisonment for debt abolished.

23. No agriculturist's land shall be attached or sold in execution of any decree or order unless it has been specifically pledged as security for the repayment of the debt to which such decree or order relates, and the mortgage lien still subsists. Bombay draft, ss. 33, 39 and 41.

Land exempted from attachment and sale unless specifically pledged.

But the Court may, when passing a decree or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any land of an agriculturist judgment-debtor to the possession of which such judgment-debtor is entitled, and which, in the opinion of the Collector, is not required for the support of such judgment-debtor and the members of his family dependent on him, and deal with the same for the benefit of the decree-holder in manner provided by section thirty-one.

24. If, upon application being made for the execution of a decree for the payment of money against an agriculturist, it appears that the person against whom execution is sought is not the person made liable by the decree for the amount thereof, but the heir of such person, the amount recoverable under the decree shall be limited in accordance with the provisions of section sixteen. Bombay draft, s. 42.

Ancestral debt.

CHAPTER IV.

OF INSOLVENCY.

Draft, s. 44.

Subordinate Judges to have jurisdiction in agriculturists' cases.

25. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his jurisdiction declared insolvent and proceedings taken under orders passed by him under the second clause of section twenty, and no such application or proceeding shall be dealt with by any other Court.

Draft, s. 44.

Agriculturist may apply for adjudication in cases not provided for by Code.

26. Any agriculturist who is in debt to the amount of fifty rupees or upwards and who resides within the said districts may apply to any Subordinate Judge within the local limits of whose jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property in execution of decree.

Draft, s. 52.

Modification of section 351 of the Code.

27. Notwithstanding anything contained in section 351 of the Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said Code or section twenty-six of this Act.

Receiver.

28. No person other than the Nazir of the Court shall be appointed as receiver, and no receiver shall be entitled to commission.

Draft, s. 53.

Proof of debts.

29. In determining under section 352 of the said Code the amount of any claim of the nature referred to in section twelve of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by sections twelve to sixteen of this Act, both inclusive.

Draft, s. 58.

Power to make over moveable property to creditor at valuation.

30. Whenever any moveable property of an insolvent is liable to be sold by a receiver under section 356 of the said Code, the Court may direct that it shall not be so sold, and may, after recording the opinions of two Assessors appointed by the Court in this behalf, determine the value of such property and direct the receiver to transfer it to any of the scheduled creditors who may be entitled to receive in the distribution under the said section 356 an amount equal to or greater than the value so determined; and such creditor shall accept such property in full or partial liquidation (as the case may be) of the amount to which he is so entitled.

Draft, ss. 59

Immoveable property not to vest in receiver,

but may be managed for benefit of creditors.

31. No immoveable property of the insolvent shall vest in the receiver; but the Court may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any such property to the possession of which the insolvent is entitled, and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors, by letting it on lease or otherwise:

Provided that if the insolvent or his heir at any time pays into court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

Secured debts.

32. When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property rent-free for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property by public auction or otherwise as he thinks fit.

Where property is let under this section, the premium shall be applied to the payment of the debt.

When property is sold under this section, the sale proceeds shall be applied, first, to the payment of the debt; and the balance, if any, shall be paid to the receiver.

33. So long as any management under section thirty-one or letting under section thirty-two continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property or any part thereof. Bombay draft, s. 60.

Insolvent incompetent to sell, etc., property dealt with under sections 31 and 32.

34. When the balance available for distribution among the scheduled creditors under section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section thirty-one. Bombay draft, s. 59.

Scheduled debts discharged.

35. No Subordinate Judge exercising the powers conferred by section twenty-five, if he is a Subordinate Judge of the first class, shall sentence any person under section 359 of the said Code to imprisonment for a term longer than three months, or if he is a Subordinate Judge of the second class, shall so sentence any person for a term longer than one month.

Limitation to powers of Subordinate Judges under section 359 of the Code.

CHAPTER V.

Of Village-Munsifs.

36. The Local Government may from time to time appoint any Patel of a village to be a Village-Munsif for such village or for such villages and for any other villages the sites of which are situate not more than two miles from the site of such village, and may cancel any such appointment. Bombay draft, s. 5.

Appointment of Village-Munsifs.

37. Every Village-Munsi so appointed shall take cognizance of suits for money lent, or advanced to, or paid for, the defendant, or due as the price of goods sold or on an account stated, or on a written or unwritten engagement for the payment of money when the amount or value of the claim does not exceed ten rupees, and all the defendants at the time of the commencement of the suit actually and voluntarily reside or carry on business or personally work for gain within the local area for which such Village-Munsif is appointed. Bombay draft, s. 5.

Suits triable by them.

Jurisdiction of other Courts excluded.

A suit cognizable by a Village-Munsif shall not be heard by any other Court:

Provided that the Special Judge may from time to time transfer any suit instituted before a Village-Munsif to any other Civil Court in the district for trial:

Proviso.

Provided also that no Village-Munsif shall try any suit in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

38. The Special Judge may on a petition being presented within thirty days from the date of any decreee or order of a Village-Munsif by any party aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village-Munsif. Mad. Reg. V of 1816, s. 29.

Special Judge's power of revision.

Except as herein provided and as provided in section 622 of the Code of Civil Procedure, every decree and order of a Village-Munsif shall be final.

39. The Local Government may from time to time, by notification in the local Gazette, make rules for regulating the procedure of Village-Munsifs and for conferring on them any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the Code of Civil Procedure or any other enactment for the time being in force.

Power of Local Government to make rules.

CHAPTER VI.

Of Conciliation.

Appointment of Conciliators.

40. The Local Government may from time to time appoint any person to be a Conciliator and cancel any such appointment. Bombay draft, s. 62.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local limits as the Local Government may from time to time determine.

aft, s. 63. Matters which may be brought before Conciliator.

41. When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties, one of whom is an agriculturist residing within any local limits for which a Conciliator has been appointed, any of such parties may apply to such Conciliator to effect an amicable settlement between them.

aft, s. 64. Procedure thereupon.

42. If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a general statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him upon a day to be fixed for this purpose, and shall direct the applicant also to be present on such day.

Day for attendance may from time to time be postponed.

If the said person fails to appear on the day first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

raft, s. 65. When all parties appear, Conciliator to endeavour to reconcile them.

43. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

raft, s. 66. Conciliator to hear statements of witnesses, etc.

44. The Conciliator shall hear the statement of any witness and peruse any book of account or other document produced by the parties, and if any party or witness consents in writing to affirm any statement upon oath or solemn affirmation in any form not repugnant to justice or decency and not purporting to affect any third person, shall arrange for such oath or solemn affirmation being duly taken in the presence of all the parties.

raft, s. 67. Any agreement arrived at to be reduced to writing.

45. If on the day on which the case is first heard by the Conciliator or on any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise attested by the Conciliator and the parties or their representatives respectively.

raft, s. 68. Procedure when agreement finally disposes of case.

46. When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides.

The Court which receives the agreement shall order it to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

Procedure where agreement is for reference to arbitration.

47. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure.

draft, s. 69. Certificate to be given to applicant if conciliation fails.

48. If the person against whom any application is made before a Conciliator cannot be found, or if he refuses or neglects, after such period as the Conciliator thinks reasonable has been allowed for his appearance, to appear before the Conciliator, or if he appears, but the attempt to reconcile the parties or to induce them to resort to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his signature to that effect.

draft, s. 69. Suit, etc., not to be entertained by Civil Court unless such certificate is produced.

49. No suit and no application for execution of a decree passed before the date on which this Act comes into force to which any agriculturist residing within any local limits for which a Conciliator has been appointed is a party shall be entertained by any Civil Court, unless the plaintiff or decree-holder produces a certificate as aforesaid.

Local Government to frame rules.

50. The Local Government may from time to time make rules— Bombay draft, s. 85.

(a) regulating the proceedings of Conciliators in matters not provided for by this Act;

(b) fixing the charges to be made by Conciliators for anything done by them under this Act; and

(c) determining what record and accounts shall be kept by Conciliators and what returns shall be framed and furnished by them.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

Special Judge.

51. The Local Government shall appoint an officer, as Special Judge, to inspect, supervise and control the proceedings of all Subordinate Judges, Village-Munsifs and Conciliators under this Act, and to discharge in respect of such proceedings before Subordinate Judges all the functions of the District Court.

The officer so appointed shall not, without the previous sanction of the Government of India, discharge any public function except those which he is required by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge in regard to any matter, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

52. The Special Judge may—

District Judge may withdraw case from Subordinate Judge,

(a) transfer to his own file, and himself as if he were a Subordinate Judge dispose of any suit or other matter pending before the Court of any Subordinate Judge; or Bombay draft, s. 85.

or sit with Subordinate Judge as a Bench for trial of any case.

(b) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this chapter.

If the members of any Bench sitting under this section differ in opinion, the opinion of the Special Judge shall prevail.

Appointment of Assistant or Subordinate to aid Special Judge.

53. The Local Government may appoint any Assistant or Subordinate Judge to inspect and supervise, subject to the control of the Special Judge, the proceedings of all Subordinate Judges, Village-Munsifs and Conciliators under this Act in one or more districts. Bombay draft, s. 7.

Any Assistant or Subordinate Judge so appointed may in the districts for which he is so appointed, if the Special Judge so directs, exercise the powers of the Special Judge under section fifty-two of this Act, and transfer any suit under section 25 of the Code of Civil Procedure.

Of revision.

54. The Special Judge may call for and examine the record of any suit or other matter tried by a Subordinate Judge for the purpose of satisfying himself, of the legality or propriety of any decree or order passed, and as to the regularity of the proceedings, and may pass such order thereon as he thinks fit; and any Assistant Judge or Subordinate Judge appointed by the Local Government under section fifty-three may similarly in the districts for which he is appointed call for and examine the record of any such case, and, if he see cause therefor, may refer the same, with his remarks, for the orders of the Special Judge: Bombay draft, s. 32.

Provided that no decision or order shall be reversed or altered for any error or defect, or otherwise, unless a failure of justice appears to have taken place.

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

55. The Local Government may—

Appointment of Village Registrars.

(a) appoint such persons as it thinks fit, whether public officers or not, to be Village Registrars for such local areas as it may from time to time prescribe; Bombay draft, s. 1

(b) direct that the Village-Registrar for any local area may discharge the functions of a Village-Registrar for any other local areas concurrently with the Village-Registrars of such other local areas; and

(c) delegate to any person by name or in virtue of his office the powers conferred on it by this section.

bay draft, s. 72.
I of 1879, s. 34.

Instruments executed by agriculturist not to be deemed valid unless executed before a Village-Registrar.

56. No instrument purporting to create, modify, transfer or evidence an obligation for the payment of money or a charge upon any property executed after the passing of this Act by an agriculturist residing in any local area for which a Village-Registrar has been appointed shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar:

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding.

bay draft, s. 73.

Such instruments to be written by or under the superintendence of a Village-Registrar and executed in his presence.

57. When any persons, one or more of whom is an agriculturist, desire to execute any such instrument, they shall present themselves before the Village-Registrar appointed by the Local Government for the area in which the said agriculturist or any one of the said agriculturists resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the parties, and receiving from them the fee (if any) prescribed by the Local Government and the stamp (if any) which may be necessary, shall write the instrument, or cause the same to be written under his superintendence, and require the parties to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall be attested by the Village-Registrar, and also, if any of the parties thereto is unable to read and write, by two respectable witnesses.

bay draft, s. 74.

Registration of instruments by Village-Registrars.

58. Every Village-Registrar shall keep a register of instruments executed before him in such form as shall from time to time be prescribed by the Inspector General of Registration under section sixty-one of this Act.

As soon as any instrument has been completely executed before a Village-Registrar, he shall make or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties, if there be more than one.

Previous to delivery, the original instrument and each such copy shall be endorsed under the Village-Registrar's signature with the date of registration, the name and residence of the Village-Registrar and the volume and page of the register in which the instrument has been registered.

mbay draft, s. 75.

Consideration to be fully stated in every instrument executed before a Village-Registrar.

59. In every instrument written by or under the superintendence of the Village-Registrar the amount and nature of the consideration, if any, shall be fully stated.

The Village-Registrar shall also endorse upon the instrument a note, under his signature recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

If the instrument is to be executed in supersession, or partly in supersession, of a previous instrument, such instrument shall be produced before the Village-Registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village-Registrar under his signature for identification.

ombay draft, s. 76.

Registration under this Act to be deemed equivalent to registration under the Indian Registration Act, 1877.

60. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village-Registrar, but has been otherwise executed, shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

61. The said Inspector General shall exercise, by himself and his subordinates, a general superintendence over all Village-Registrars, and shall have power from time to time to make rules consistent with this Act for regulating their proceedings and for providing for the custody of their records. Bombay draft, s. 77.

Village Registrars to be subordinate to the Inspector General of Registration.

62. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party to be executed before a Village-Registrar. Bombay draft s. 80.

Exemption of instruments to which Government or any officer of Government is a party.

63. The Local Government may from time to time make rules regulating the appointment, suspension, dismissal and remuneration of Village-Registrars, and prescribing the fees to be levied by them.

Power of Local Government to make rules.

CHAPTER IX.

Of Receipts and Statements of Account.

64. Every agriculturist who makes any payment of money in liquidation of a debt shall be entitled to receive at the time of such payment a written receipt from the person to whom such payment is made, Bombay draft, s. 81.

Agriculturists to be entitled to written receipts,

If such payment is made under any instrument executed before a Village-Registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section fifty-eight.

65. Any agriculturist by whom any money is due under any instrument shall be entitled to receive from the person claiming under such instrument, within one month after the date on which by local custom annual accounts are balanced, a statement of his account up to that date. Bombay draft, s. 82.

and to annual statements of account;

The Local Government may, by notification in the local Gazette, declare what date shall in any district or portion of a district be taken to be the date on which annual accounts are balanced for the purpose of this section.

66. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book, and to require from time to time that his account up to date be written therein and attested by the signature or mark of the said trader or money-lender. Bombay draft, s. 83.

and to have his account made up from time to time in a pass-book.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent for the purposes of section sixty-four to the grant of a receipt for the amount so entered.

67. Any person who, in contravention of section sixty-four, sixty-five or sixty-six, refuses or neglects to give a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence, with fine which may extend to one hundred rupees. Bombay draft, s. 84.

Penalty for contravention of sections 64 to 66.

CHAPTER X.

Legal Practitioners.

68. No pleader, vakil, mukhtar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to a case before a Village-Munsif or a Conciliator: Bombay draft, s. 70.

Pleaders, etc., excluded in certain cases.

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Munsif, to employ any relative, servant or dependent, who is not, and has not previously been, a pleader, or a mukhtar or vakil to appear either conjointly with or in lieu of such party.

When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power of attorney defining the extent to which he is empowered to act.

69. In awarding costs to any party in any suit or proceeding before a Subordinate Judge under this Act, in which the subject-matter does not exceed one hundred rupees in amount or value, nothing shall be allowed on account of the fees of any pleader, vakil, mukhtar, or of any Substituted for part of Bombay draft, s. 70.

Pleaders' fees.

advocate or attorney of a High Court, unless the Court, for reasons to be recorded by it in writing, thinks that professional assistance was necessary to the proper conduct of such party's case.

bay dr aft, s. 70. Power of Court to appoint pleader for agriculturist.

70. When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party, any pleader, vakil or mukhtar, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or some other competent person (who is willing so to do) to appear on his behalf.

CHAPTER XI.

MISCELLANEOUS.

bay draft, s. 79. Mortgages, etc., to be valid only when written and registered.

71. No mortgage, lien or charge of or upon any immoveable prcperty belonging to an agriculturist shall be valid unless it is created by an instrument in writing signed by the person creating such mortgage, lien or charge.

Limitation.

72. In any suit against an agriculturist under this Act for the recovery of money the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

(*a*) when such suit is based on a written instrument registered under this Act or any other law in force at the date of the execution of such instrument,—twelve years;

(*b*) in any other case,—six years:

Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before the passing of this Act.

bay draft, s. 30. No appeal in cases tried under this Act by Subordinate Judges.

73. No appeal shall lie from any decision or order in any suit or proceeding before a Subordinate Judge under this Act.

Decision as to whether person is or is not agriculturist final.

74. The decision of any Court of first instance that any person is or is not an agriculturist shall be final.

bay draft, s. 29. Civil Procedure Code to apply in Subordinate Judges' Courts.

75. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges.

Additional power to make rules.

76. The Local Government may from time to time make all such rules as it may deem necessary for carrying out the provisions of this Act.

Rules to be published.

77. All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

Statement of Objects and Reasons.

1. The inquiries made into the causes of the riots which occurred in the Deccan districts in 1875 and the discussions which have since taken place show that the difficulties under which the agriculturists in those disicts labour are due, in a great measure, to the unsatisfactory nature of the relations at present subsisting between them and the money-lending classes.

2. In order to put those relations on a better footing, it is deemed necessary—

first, to provide some safeguards against the money-lenders committing frauds in their accounts and obtaining from ignorant peasants bonds for larger amounts than are actually paid to or due from them;

secondly, to arrange disputes by conciliation as far as possible; to increase the number of Courts, and to simplify and cheapen the administration of justice, and thus to afford facilities to the agriculturist to defend any suit that may be brought against him;

thirdly, to insist that in suits against agriculturists the Court shall in certain cases of its own motion investigate the entire history of the transactions between the parties, and do substantial justice between them;

fourthly, to restrict the sale of the raiyat's land in execution of decree, and to provide an insolvency-procedure more liberal to the debtor than that of the Code of Civil Procedure.

The present Bill has been drafted with a view to securing these objects, in so far as they can be secured by legislation. It extends only to the four districts in which the agricultural distress has been most felt.

3. An attempt has been made to secure the first object by sections 55 to 63, providing for the appointment of village-registrars before whom every written obligation for the payment of money by an agriculturist must be registered; by sections 64 to 67, requiring money-lenders to give receipts to agriculturists for all payments made by them, to render accounts, and to furnish a pass-book in which the agriculturist's account will be periodically written up, and by section 71, which invalidates all mortgages created by an agriculturist otherwise than by a written instrument.

4. With a view to the second of the proposed objects, the Bill provides in sections 40 to 50 for the establishment of a system of conciliation under which, it is hoped, a large number of disputes will be settled out of court; and in sections 36 to 39 for the appointment of village munsifs, like those in the Madras Presidency, to dispose of petty cases. A further addition to the machinery for the disposal of suits will be made by an increase of the number of Subordinate Judges; but, as this a matter which it is competent to the Local Government to deal with under the existing law, no reference to it will be found in the Bill.

5. As regards procedure, it is proposed, with a view to a more rapid despatch of business and to diminishing the cost of litigation, to simplify the record in certain respects (sections 10 and 11); to discourage the employment of pleaders in petty suits (section 69); and to substitute for the present system of appeals a very strict and searching supervision (sections 51 to 54).

6. Sections 12 to 16 provide in certain cases for a thorough investigation into the history of the transaction between the parties (the third of the four objects mentioned above). They prescribe the system in which the raiyat's account is to be made up in cases where the Court finds it necessary to set aside oppressive or inequitable arrangements between the parties, and they guard especially against exorbitant demands for interest.

7. The presence of the defendant being essential for the thorough investigation proposed, and the raiyats being, through various difficulties, apt to leave their suits undefended, it has been provided (in section 9) that except for special reasons, no suit shall be decided *ex-parte*, but that the Court shall compel the defendant to appear.

8. The last of the four objects proposed will be found provided for by sections 25 and 33, which enact that land shall not be sold to pay the debt of the owner except where it has been specifically pledged, but admit of its profits being made available to the creditor for a term of years, and by the sections relating to insolvency.

9. The chief points in which the provisions of the insolvency-chapter differ from those of the Code are that they allow an agriculturist to apply to be adjudicated an insolvent, though no process in execution has been issued against him; that they entitle him to an adjudication in all cases in which, as a matter of fact, he may be insolvent, leaving any misconduct on his part to be punished under the Code of Civil Procedure; and that they similarly entitle him in all cases to a complete discharge from debts which, after all reasonable enforcement, he is unable fully to pay.

10. This insolvency procedure is further supplemented by section 20, which gives the Court a summary power in petty cases to discharge a judgment-debtor who is clearly insolvent, and by section 22, which abolishes imprisonment for debt.

11. The only other provisions of the Bill which appear to call for special notice are section 70, which empowers the Court to direct the Government pleader to appear on behalf of a raiyat when he is unable to engage the services of a professional advocate and the opposite side is represented by a pleader, and section 72, which extends the period of limitation in suits for debt instituted against agriculturists. This latter provision has been introduced into the

Bill, as there appears to be a pretty general consensus of opinion to the effect that the difficulties of the raiyat are much aggravated by the present law of limitation, which compels the money-lender at very short intervals to sue him or take a fresh bond, either of which steps commonly entails a considerable addition to the debt.

SIMLA;
The 7th July 1879.

T. C. HOPE.

No. 69. From the Acting Chief Secretary to the Government of Bombay, to the Secretary to the Government of India, Legislative Department,—No. 4495, dated 27th August 1879.

I am directed to acknowledge the receipt of your letter No. 780, dated July 26th, 1879, wherewith you forwarded thirty copies of the Bill for the relief of indebted agriculturists in certain portions of the Deccan, and other papers, and conveyed the request of His Excellency the Governor General in Council that the opinions of this Government, of the Honourable the Judges of the High Court and of selected local officers not exceeding six may be recorded and forwarded to you for submission to the Select Committee to which the Bill has been referred before the 15th of September.

2. I am to inform you that the views of the Honourable the Judges and of six officers whom this Government has thought fit to consult will be forwarded to you as soon as their reports are received, and that it has been desired in all cases that these reports may be sent in on or before the 1st of September. In the meantime His Excellency the Governor in Council desires me to communicate without any delay the opinion of the Government of Bombay upon the Bill.

3. The first point to which special attention is invited by your letter is the question, to what extent the right of appeal should be curtailed? You observe that this question has been left by the Secretary of State's despatch of December 26th completely in the discretion of the Supreme Government and the Government of Bombay; that the Bill, as it now stands, has been drawn in accordance with the views of this Government so as to exclude appeals in all those classes of cases to which it applies, but that the machinery for the system of revision, which is to take the place of appeal, has been strengthened by the addition of a special Judge. I am to say that His Excellency the Governor in Council is of opinion that no alteration should be made in the Bill as it now stands. He considers that though in some instances advantage may follow on the hearing of a case by an appellate Court, yet advantage is not likely to result in so large a number of cases as to outweigh the disadvantage of allowing an appeal in all cases; that no distinction need be recognized between appeals in mortgage cases and appeals in simple money claims; and that where errors have to be corrected, relief can be afforded on a petition for revision as well as on a regular appeal. The cost of the special Judge and his establishment will have to be met from the Provincial revenues in addition to the charges previously contemplated, and this Government are prepared to accept this liability in order that the machinery for revision may be as complete as possible.

4. *Sections 12 to 16.*—Adverting next to paragraph 6 of your letter, the Governor in Council regrets that he is wholly unable to accept the provisions of sections 12 and 13 of the Bill framed by the Government of India as a sufficient or satisfactory substitute for those of sections 3, 33, 34 and 36 (proviso) of the draft Bill submitted by this Government. His Excellency the Governor General in Council is aware, from the previous correspondence, that the remedies contemplated in these sections are regarded by this Government as considerably the most important of all those which it is intended that the proposed enactment shall provide for. These remedies have been on several occasions described as those which will enable the Courts to "go behind the bond." This expression, however, only partially describes the specific objects which this Government has had in view, which may be stated as follows (namely) :—

(1) to compel the Courts, in every case of a claim against an agriculturist for debt, to inquire into the transactions out of which such claim has arisen from their very commencement;

(2) to require the Courts—independently of all bonds or other documents purporting to contain an admission, by the agriculturist, of his liability for a definite amount—to ascertain the actual amount of money lent to, or due by, him;

(3) to authorize the Courts, in the case of doubt arising as to the real nature, or extent of the transactions between the parties, to fix the amount to be paid by the agriculturist on account of principal with reference to such considerations as the respective means and positions of the parties, the circumstances under which the money was borrowed, and such like;

(4) to enable the Courts, of their own motion, to refer the question of the sum to be allowed on account of principal to arbitration whenever they might think fit;

(5) to throw the burden of proof in all such cases, notwithstanding any such admission as above mentioned, unreservedly on the creditor;

(6) to require the Courts in every case to consider the equity of the interest charged and to allow only what is equitable;

(7) to make it illegal to award compound interest;

(8) to refuse to allow the creditor to receive, in the aggregate, an amount of interest exceeding the amount of the principal debt;

(9) to limit the liability of agriculturists for ancestral debt.

5. Each of these points was provided for in the draft Bills which have been submitted by this Government to the Government of India; and, as pointed out in paragraph 15 of my letter No. 654, dated 18th April 1879, an endeavour was made, in the final draft therewith submitted, to mould the sections dealing with them in such a shape as to render them less open to the objections which were entertained to them by the Government of India in their original form. If, therefore, the sections which have been substituted by the Government of India for those proposed by this Government had substantially preserved the principles which this Government had sought to embody in its proposals, the Governor in Council would not have demurred to the particular form in which His Excellency the Governor General in Council might think it expedient to give effect to those principles. But sections 12 and 13 of the Government of India's Bill entirely ignore the third and fifth, and do not by any means completely secure the first, second, seventh and eighth of the abovementioned objects.

6. The Governor in Council is not in possession of the arguments which have led the Government of India to omit from their Bill the highly important provisions of the Bill of this Government under the heads (3) and (5) above set forth. Those under head (3) were contained in section 34 of the Bombay Bill, which purported, where the nature and extent of the transactions between plaintiff and defendant are left in doubt by the direct evidence procurable, to permit the Judge to attach weight to certain equitable considerations as relevant facts. The points for consideration named were the means and position of the parties at the time, the state of the borrower's credit, the circumstances under which the loan was incurred, and the probable requirements of the borrower under those circumstances. I am desired to say that the Governor in Council continues to be of opinion that these considerations are often an essential element of the history and merits of the case into which the Court cannot without disadvantage neglect to inquire. When due regard is paid to the superior intelligence of the creditor class, to the confusion and obscurity which is often designedly thrown over the history of the transactions, and to the frequent extravagance and unreasonableness of the obligations into which the debtor is decoyed, a relaxation of the rigour of existing practice as to the admission of evidence, which may at first view appear of doubtful expediency, is invested with signal advantage by the special circumstances under which jurisdiction will be exercised by virtue of this Act. For the Subordinate Judges, holding their courts among the homes of the parties, will have at command the completest knowledge of the suitors, their habits, possessions and necessities, wherefrom they may draw conclusions of substantial truth and equity in cases wherein creditors, for the embarrassment of the Court and the confusion of the debtor, have thought fit to substitute a veil of chicanery for the plain and honest exposition of their claims, and thus to baffle the Judge in his attempt to explore to the fountain-head the history of the transactions between the money-lender and his client. The admission of such considerations in aid of more direct evidence is familiar to the people of this country in the settlement of their debts, and has not been discarded by the Courts of Native States. The Governor in Council has not failed to observe that, by section 13 of the Bill, the Court is empowered to refer either the whole inquiry into the history and merits of the case, or the amount to be paid as principal or interest or both, to arbitrators nominated by the parties or the Court. It is readily granted, that a reference to arbitration may be authorized with advantage, and may frequently be resorted to with success; but it is not considered by this Government that this expedient will compensate for the omission of the authority conveyed to the Court itself by the 34th section of the Bombay draft Bill, and His Excellency in Council trusts that, on further consideration of the special character of the jurisdiction contemplated, the Government of India will be pleased to restore that section to the Bill before the Council.

7. The modification of the ordinary rules as to the burden of proof in suits between money-lenders and raiyats (which is the point named in clause 5 of my fourth paragraph) is a

matter closely connected with the same subject. The views of this Government on this point have been fully explained in the former correspondence; but I am directed again to call attention to the following passages from the Minute recorded by His Excellency the Governor under date August 30th, 1878, in which all the Members of this Government fully concurred:—

13 The gist of the matter, then, is this. The Deccan raiyats were sued, still are sued, and will always be sued—unless there be fresh legislation—on bonds which are, in many instances, utterly unjust, though they may have been executed in due from. I mean by 'unjust,' repugnant to the sense of natural justice as between man and man—that moral sense which is present in the minds of all men, whether educated or uneducated. The harassment therefrom arising drove these raiyats in 1875 to commit agrarian outrages. A special Commission showed after elaborate inquiry that the essential injustice of the majority of the bonds was the root of the mischief. It is clear that this injustice would be demonstrated by any judicial inquiry which might be had regarding the origin, progress and circumstances of the debts. The existing law provides for judgment being given on the bonds only: that much is certain. Whether it provides for the Court by its own inquiries going behind the bond is, as we submit, uncertain. The Government of India seems to consider that it does so provide, while apparently admitting that the provision is indirect rather than direct, and must be gathered from scattered rulings and clauses, rather than learnt from positively clear enactment. We submit with deference that the uncertainty is such that the Courts practically do not go, can hardly be expected to go, and for the most part are sure not to go, behind the bond. Therefore, we urge that there ought to be direct and positive legislation, without which the existing evils must be perpetuated.

16. I must next advert to the apprehension apparently felt by the Government of India lest we should by our point (*a*) (causing the Court to go behind the bond) unduly throw upon the plaintiff the burden of proof in cases where no defence is attempted.

17. At present the indebted raiyats seldom set up any defence to these claims. They see the futility of disputing the bonds in Court, whatever they may think of the injustice. Indeed, they have no chance whatever before the law of setting up any defence which the Courts could be expected to act upon. But if our point (*a*) be passed into law, they would set up defences fast enough, and this, too, with some chance of equitable success. In this event it is manifestly just and reasonable that the burden of proof should fall upon the plaintiffs. But, in the absence of defence in cases of this sort, it seems to me but right that the plaintiff should have to satisfy the Court that the bond is a just one. I am unable to follow the reasoning (as above quoted), to the effect that to cast on the plaintiff the burden of proving receipt of the consideration, and the absence of fraud, would afford opportunities of evasion to dishonest debtors, and might thus be an incentive to reckless borrowing. Here we have educated, skilful and wealthy creditors bringing claims against uneducated-unskilful and poor debtors. Is it unfair to cast upon such creditors the burden of proving such claims to be just, even if undefended? On the contrary, does not fairness demand that such burden should be cast upon them? In fact, too, these raiyat debtors are not, for the most part, evasive or dishonest debtors; they generally pay all, and much more than all, they really owe! It is this notorious circumstance which underlies the whole argument. The feeling of despair of ever getting out of the money-lenders' books makes them reckless in going on borrowing, and borrowing destroys all hope of independence. Our provisions will not be incentives to reckless borrowing, but will have the very reverse effect.

8. I am to repeat the unalterable conviction of this Government, that unless provision is made in the Bill for throwing the burden of proof in all cases between money-lenders and raiyats unreservedly upon the former, and for effectually barring the operation in such cases of clause 1, section 9 of Bombay Regulation V of 1827, which requires the defendant to show that the amount stated in a written acknowledgment of debt was not received by him, the enactment which the Government of India propose to pass will be deprived of all virtue and efficacy, and will entirely fail in affording the relief which it is designed to afford to an ignorant, illiterate, but, generally speaking, honest, peasantry.

9. I am next to advert, in detail, to the provisions of sections 12 and 13 of the Government of India's Bill, which are as follows:—

(A) that if the amount of the creditor's claim is disputed, or if it is admitted, but the Court sees reason to doubt the truth of the admission, the Court shall be bound to inquire into the history and merits of the case from the commencement;

(B) that if the claim is admitted, and the Court sees no reason to doubt the truth of such admission, it may make such inquiry, but shall not be bound to do so;

(C) that the object of the inquiry shall be, *first*, to ascertain if there is any equitable defence to the suit, and *second*, to take an account, if necessary, in the following manner;

(D) that the account shall be taken on the footing of any agreement between the parties as to (*a*) interest, or (*b*) the profits of mortgaged property, or (*c*) the way of taking the account, if such agreement appears to the Court fair and equitable; but

(E) that if not, the Court may set aside such agreement, and any statement or settlement of account, or any renewed bond, and determine the amount due—

(*a*) by taking separate accounts of principal and interest;

(*b*) by allowing as principal only the sums actually received by the debtor;

(*c*) by allowing simple interest only on the balance of principal from time to time outstanding;

(*d*) by crediting all payments, etc., as far as they go, in settlement of interest due at the time they are made, and the balance in reduction of capital; and

(*e*) by disallowing any balance of interest due at the date of suit in excess of the balance of principal due at such date.

10. With reference to (A) and (B), the Governor in Council desires me to observe that the provision in the Bill which expressly authorizes the Court to inquire into a claim after the amount of it has been admitted by the defendant appears to be, on the face of it, inequitable. The course suggested by this Government is, it is thought, a much preferable one—namely, to require the Court to hold an inquiry into the history and merits of every case, and to leave it to treat the admission, if any, of the defendant as evidence, and, unless there be good cause for not doing so, to act upon it as it would in a suit between any other parties.

11. With reference to (D), I am to remark that section 13 of the Bill is open to the objection that it provides for the account being taken in the manner therein described only when there has been an agreement between the parties and such agreement is thought by the Court not to be fair and equitable in respect of any of the three specified matters, although agreements may be the reverse of fair and equitable in many other respects than those indicated. The benefits of the section are thus limited to a portion only of the cases to which they ought, it is thought, to be extended. Moreover, the section in question is open to the further objections that a Subordinate Judge who is inclined to be indolent may at any time save himself the trouble of all further inquiry by saying that he thinks an agreement fair and equitable: and that when an agreement is held by the Court, whether *bona fide* or not, to be fair and equitable, the agreement will have to be carried out to the letter, even if it contemplates the award of compound interest and the payment of interest in contravention of the rule of *dam dupat*, which with respect to Hindus is now in this Presidency recognized as an established rule of law applicable to all contracts. Section 13 of the Government of India's Bill thus fails to fulfil the objects of this Government set forth above in clauses (7) and (8) of my fourth paragraph, namely, that it shall be illegal to allow compound interest or interest exceeding the principal in any case.

12. With regard to the subject of interest, I am also to ask attention to the fact that the effect of (E), (*e*) will be merely to prevent interest being awarded in the decree in excess of the amount of the balance of principal due at the date of the suit, quite irrespective of any payments of interest that may have been previously made to the creditor. The proposal which has been made by this Government is, however, that the amount of interest received by the creditor shall not exceed, *in the aggregate*, the amount of the principal debt (*vide* clause (8), paragraph 4). This, looking to the relative positions of money-lenders and raiyats and to the admitted necessity for protecting the latter from exorbitant claims, is thought to be a reasonable provision, and the Governor in Council would be unwilling to acquiesce in its omission.

13. With reference to (E), (*b*) and (*d*), which relate to the ascertainment of the amounts actually lent to the debtor, and of the sums from time to time received from him by the creditor, the Governor in Council cannot anticipate that these proposed rules for taking on account will effect any appreciable good, unless the omitted provisions as to the method of ascertaining, in cases of doubt, the amount to be allowed as principal, and as to the burden of proof, are incorporated with them.

14. Upon the whole, after the most careful consideration the Governor in Council regrets that he is unable to accept sections 12 and 13 of the Government of India's Bill as at all equivalent to the sections of the draft Bill submitted by him for which they have been substituted. The changes which have been made have so completely emasculated the proposals of this Government, so deprived them of all virtue and vigour, that it would, in the opinion of the Governor in Council, be better that the contemplated legislation should be deferred, or not proceeded with at all, than that the Bill should pass into law, containing, in

respect of the most important of all the remedies which it is intended to supply, such impotent and inadequate provisions as those of its present sections 12 and 13.

15. With reference to paragraphs 7 and 8 of your letter, which deal with sections 16 and 24 of the Bill, I am to mention that the object of those sections was to render it no longer worth the while of a money-lender to lend his money to an agriculturist for the purpose of realizing, by means of the interest he may be able from time to time to exact, an annuity payable by the debtor from generation to generation, and without any intentions of ever getting the capital repaid. The operation of the sections was thus intended to be quite independent of the general law, which limits the liability of heirs for ancestral debts to the extent of the assets which they may inherit. But as the proposed provisions appear not to be approved by His Excellency the Governor General in Council, and the need for them will be, to a great extent, obviated by the portions of the Bill relating to insolvency and to the inquiry into claims, if such inquiry is conducted subject to the rules proposed by this Government, I am to say that the Governor in Council will have no objection to the sections in question being omitted.

16. I am to observe that new provisions have been added to sections 23, 31 and 32 for the management of the debtor's land or immoveable property by the Collector. His Excellency in Council, after considering these additions to the Bill, has no general objection to make to their introduction. Again, with reference to section 30, His Excellency the Governor in Council has perused the remarks made in Council on the transfer of moveable property to the creditors, and is of opinion that this section should be retained.

17. I am to say, with reference to section 35, which limits sentences of imprisonment under section 359 of the Civil Procedure Code, that His Excellency the Governor in Council, after giving consideration to the comments made on this section of the Bill in the Council of the Governor General, does not desire to press the introduction of the proposed reduction in favour of agriculturists of the terms of imprisonment prescribed in the Code, and is also of opinion that sentences passed under section 859 of the Code by Subordinate Judges exercising powers under the proposed Act should be subject to appeal.

18. I am next to remark on section 36 relating to village munsifs, regarding which you observe that the main lines of the Madras system have been to some extent restored. It has consequently been provided in the Bill that patels only are to be eligible for the office of village munsif; and you remark that if the number of village headmen who are competent to decide petty suits without the check of appeal or revision is found to be small, the proper conclusion seems to be that the village munsif system is scarcely suited to the districts of the Deccan. On this subject I am directed to say that although the intelligence of the patels is unquestionably low, and will not be sensibly improved until the younger generation, now for the most part being educated in the Government schools, replaces the present patels in office, yet there are not only some patels who are already fit for the duties of village munsif, but there are, in addition, respectable residents of various classes whom His Excellency in Council would much regret to see excluded from the field of selection. He is therefore of opinion that the restriction to patels of villages should be enlarged, and that the description of the persons whom the Local Government may appoint to be village munsifs should include village headmen, inamdars, village or district hereditary officers, and other persons whom this Government may deem possessed of sufficient social *status* and local influence.

19. No restriction has been proposed in the selection of persons for the function of Conciliator; but, with reference to the remarks of the Hon'ble Sayyad Ahmad in the Council, I am directed to say that it is not desirable to exclude from the office of Conciliator all revenue officers, some of whom are capable of exerting a very intelligent and beneficial influence in that capacity.

20. In reply to your remarks (paragraph 10) on the subject of the persons available in the Deccan for the post of village registrar, I am to say that the kulkarnis, to whom it is proposed to commit the registration, are in the opinion of this Government, men of much capacity for public business, and that there is no objection to entrust to them the duties to be performed by the registrars under Chapter VIII.

21. Regarding the subject of procedure, I am to say that the proposed new provision in section 4, that suits for amounts between Rs. 100 and Rs. 500 shall be instituted in the Court of a first class Subordinate Judge, appears to the Governor in Council open to objection if, as is presumed, it is intended thereby that all such suits which arise in an entire district shall be instituted in the Court of the first class Subordinate Judge of that district. In the four districts to which the Bill will extend there are but three first class Subordinate Judges.

They hold their courts respectively at Poona, Satara and Ahmednagar, exercising, in accordance with sections 24 and 25 of the Bombay Civil Courts Act, both a local jurisdiction in two or three taluqas and a special jurisdiction in all cases exceeding Rs. 5,000 in value, which arise "within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the second class." If, therefore, section 4 of the Bill becomes law, the suits described in section 3 of which the subject-matter is valued at between Rs. 100 and Rs. 500 will in the Satara and Ahmednagar districts have to be instituted at Satara and Ahmednagar respectively, and in the Poona and Sholapur Districts at Poona—Sholapur being counted, for the purposes of civil judicial administration, a division of the Poona district merely.

22. The result would thus be to entirely frustrate, so far as regards the suits in question one of the principal objects which Government have in view in the remedial measures about to be adopted, namely, to bring the Courts as near as possible to the homes of the sutors. I am to say that the Governor in Council would not willingly assent to any provision which would have this effect; and that he deems it preferable that the provisions of chapter II of the Bill should be inapplicable to the suits in question when they arise within the local jurisdiction of a second class Subordinate Judge. This is what was contemplated in the draft Bill submitted by this Government; but the Governor in Council entirely approves the amendment introduced in clause (3) of section 3 of the Government of India's Bill, which will allow second class Subordinate Judges to try such suits, subject to the provisions of chapter II, with the aonsent of the parties.

23. The provisions of section 8 of the Bill are also new. The Governor in Council doubts whether it is expedient to entrust patels with the duty which it is here proposed to impose upon them, and would prefer that the service of summonses should be left to be made in the manner at present prescribed in the Civil Procedure Code.

24. *Section 69.*—With reference to paragraph 12 of your letter, I am desired to state that this Government fear that the compromise which has been adopted with respect to section 96 of the Bill will render the provision for the exclusion of pleaders in cases before Subordinate Judges altogether futile. The amount to be allowed in the costs of a suit on account of the fees of pleaders is fixed by law (Act I of 1846, section 7; Regulation II of 1827, section 52, and Appendix L), and in the case of suits for not more than Rs. 2,000 it amounts to 3 per cent. only of the value of the suit. The amount of the fee at stake in any case contemplated by section 69 of the Bill could thus never exceed Rs. 3, and it is obvious that the possible loss of so small an amount as this will not deter either suitors from engaging, or pleaders from giving professional assistance. The latter will, of course, depend, as they do now, for the most part upon the remuneration privately agreed upon, and, when possible, will take care to be paid beforehand. The Governor in Council trusts, therefore, that it will be found practicable to restore substantially the provisions of section 70 of the draft Bill submitted by him in respect of the exclusion of legal practitioners from cases tried by Subordinate Judges; but I am to add that, if such concession would tend to remove the objections of the opponents of those provisions, he would not object to their being limited in their operation to district pleaders so as not to affect pleaders or advocates or attorneys of the High Court.

25. In section 72 of the Bill provision has been introduced for the extension of limitation in debt cases. This Government have on a previous occasion expressed the opinion that it is better not to alter the general law unless a necessity for it is proved, and on this ground did not press the alteration of the law of limitation. As, however, there is undoubtedly a strong body of public opinion in favour of a return to the old periods of limitation, and as the agriculturists is now enabled by other provisions of the Act to obtain an account from his creditor at any time, this Government do not desire to raise any strong objection to the introduction of section 72. But His Excellency the Governor in person is still of opinion that a law which has operated generally in a beneficial manner should not be lightly departed from. He is aware that the reduction of the limitation periods has, in some sense, acted severely on the agriculturists of the Deccan; but with the removal of all future possibility of hardship by the provisions of the measure for their relief which is now before the Council, the arguments in favour of the shorter periods here also recover their force, and he is unable, therefore, to advocate any change in a law which was enacted after the fullest deliberation and with the most enlightened motives.

26. In the 14th paragraph of your letter you remark that a second suggestion made by Mr. Hope, in a note dated May 29, that the Arbitration Courts which have established themselves at Poona and elsewhere should be recognized and have a certain *status* and position

in our judicial system accorded to them, has not been noticed by the Government of Bombay, and that certain provisions for the recognition of local Arbitration Courts, submitted to this Government in Mr. Hope's draft Bill, have not been adopted. I am desired to say that His Excellency the Governor in Council, after the most mature consideration, decided against the admission into his draft Bill of any provision for recognizing the local Arbitration Courts, and that this conclusion was based on reasons which His Excellency in Council was desirous, if possible, to avoid stating in a public despatch seeing that to do so would involve the expression of opinions unfavourable to a social movement which has excited considerable interest, and of remarks reflecting on certain persons and classes concerned in that movement. It was also believed that the Hon'ble Mr. Hope had been placed in full possession of the opinions of His Excellency the Governor in Council on the character and objects of the promoters of the Arbitration Courts, and would convey to the Government of India that the Government of Bombay had cogent reasons for being opposed to their recognition. As, however, it is desired in your letter that this Government should give expression to their views on the expediency of judicially recognizing the Arbitration Courts of the Deccan, I am desired to say that His Excellency the Governor in Council now deems himself bound to explain without reserve, that the history of these Arbitration Courts, of which this Government is perfectly cognizant, is not such as to entitle them to the countenance of the legislature in the shape of official recognition. It may be readily granted that if the main-spring of this movement were a single-minded desire to benefit the people, to rescue the poor from avoidable litigation, and to relieve and assist the administration of justice, the influence which might accrue to the leaders of such an undertaking might well be viewed with satisfaction. But, while popular influence is undoubtedly the principal object which the leaders of the movement have set before them, His Excellency the Governor in Council is satisfied from ample evidence that the spirit of their association is not a spirit of co-operation with the State, but rather a spirit of antagonism, and even of hostility; that their design is to divert the allegiance of their fellow-countrymen to themselves as the controllers of affairs in substitution for the constituted authorities, and that the purposes to which they meditate applying the power thus transferred from the Executive Government are by no means disinterested or patriotic. I am to say that His Excellency the Governor in Council trusts that the Government of India will not fail to perceive to what individuals and classes the above observations point, and will accept the conviction of this Government, that the associations referred to cannot be formally utilized with safety or advantage as an agency supplementary to the public administration. His Excellency in Council with this explanation desires to adhere to the conclusion, on which he has already acted, that it is not expedient at the present time to extend any legal recognition to the Arbitration Courts of the Deccan.

27. With regard to your concluding paragraph, in which you invite attention to the remarks made in the letter of the Government of India, Home Department, No. 222, dated February 26th, 1879, on the possibility of improving the revenue system in force in the Deccan districts, and to the observations made on this subject by several Honourable Members of the Council in the recent debate, I am directed to say that this Government have not ceased to pay close attention to the aspects and effect of the Bombay system of land-revenue collection in these districts at the present time, and that I shall be instructed hereafter to make to the Secretary to the Government of India for the Home, Revenue and Agricultural Department any communication on the subject which may appear to His Excellency the Governor in Council to be required.

No. 70 From the Government of India, to the Right Honourable the Viscount CRANBROOK, Her Majesty's Secretary of State for India,—No. 43, dated Fort William, the 5th December 1879.

In conformity with the provisions of Section XXI of the Indian Councils Act, 1861, I have the honour to forward herewith an authentic copy of the Law noted in the margin, which has been passed by the Council of the Governor General of India for making Laws and Regulations, and to which I have signified my assent.

Act No. XVII of 1879 (an Act for the relief of indebted agriculturists in certain parts of the Deccan.

2. In accordance with the instructions contained in Your Lordship's predecessor's Despatch No. 61, dated 21st December 1869, a copy of the papers noted in the margin, relating to the Law accompanies.

Statement of Objects and Reasons, dated 7th July 1879.

Extract from Abstracts of Proceedings, dated 5th June, 17th and 18th July and 17th and 24th October 1879.

From Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the Governor General of India in Council,—No. 4 (Legislative), dated India Office, London, the 5th February 1880. No. 71.

I have to acknowledge the receipt of your Excellency's despatch dated the 5th of December, No. 43 of 1879, transmitting an authentic copy of the law noted in the margin, which has been passed by the Council of the Governor General for making Laws and Regulations, and to which your Excellency has signified your assent.

Act XVII of 1879; An Act for the Relief of indebted agriculturists in certain parts of the Deccan district.

2. The Act has been considered by me in Council. It fairly carries out the principles laid down in my despatch to the Government of Bombay of the 26th of December (No. 4 of 1878), and it will be left to its operation.

3. With regard to the important matter which forms the subject of Chapter VI I consider that conciliation can only properly be carried out by a functionary familiar with legal procedure and having some authority. In France, where the system has met with success, the conciliator is the ordinary "Juge de paix" sitting in his own Court.

4. It is within the scope of section 38 to nominate the local Judges, as far as practicable, the conciliators in each case, and I presume this course will be adopted by those entrusted with the carrying out of the provisions of the Act.

From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India, Home, Revenue, and Agricultural Department,—No. 6299, dated the 14th September 1880. No. 72.

I am directed to forward, for submission to the Government of India, the accompanying draft of a Bill to amend the Deccan Agriculturists' Relief Act, 1879, which has been prepared by the Remembrancer of Legal Affairs under instructions from this Government. The necessity for the amendments proposed is fully shewn in the papers noted in the margin of the Bill opposite to each section. Copies of these papers* are herewith forwarded. With reference to section 7 of the proposed Bill, however, this Government consider that section 47 of the Act should remain as it is.

* This Government Resolution No. 5568, dated 13th August 1880.
Report from the Remembrancer of Legal Affairs, No. 1091, dated 26th August 1880.
Letter from the Special Judge, No. 386, dated 7th June 1880, referred to in the Legal Remembrancer's Report No. 1091, paragraphs 3, 4, 16, and 20.
Letter from the Special Judge, No. 503, dated 2nd July 1880, referred to in paragraph 29 of the Legal Remembrancer's Report No. 1091.
This Government Resolution No. 5590, dated 14th August 1880.

2. In submitting the draft Bill I am desired to request that the Government of India may be moved to pass into law at the earliest possible date the said Bill or such Bill as they may be pleased to substitute for it.

3. His Excellency in Council further desires me to point out that the period allowed by section 71 of the present Act for the registration of old deeds expires on the 1st November, and that it is, therefore, very desirable that the Bill in question should become law by that date at the latest. I am also to bring to notice the advisability of publishing the Bill in the *Gazette of India* at an early date, in order that the fact that Government intend to extend the period of registration of old deeds to the end of March 1881 may become generally known.

ENCLOSURES.

ENCLOSURE No. I.

Extract from the Proceedings of the Government of Bombay, Judicial Department,—No. 5568, dated the 13th August 1880. No. 73.

READ—

Letter from the Acting Inspector General of Registration and Stamps, No. 1148, dated 10th July 1880—Forwards a statement referring to various points which have arisen from time to time with regard to the working of Act XVII of 1879 (The Deccan Agriculturists' Relief Act) since it came into force, and requests that Government will be pleased to refer the same to the Legal Remembrancer for his early opinion and report. States that he has attached to most of the queries a note giving his views on the points raised therein; that the whole of the queries affect more or less both the Act and Rules, and that he will be prepared, if so ordered, to draw up a set of supplementary rules to those now in force in accordance with the opinion of the Legal Remembrancer.

Report by the Remembrancer of Legal Affairs, No. 888, dated 20th July 1880—Submits his remarks on the various paragraphs of the statement which accompanies the above letter, and suggests that, as it is undesirable that the Rules should be altered frequently, any change Government may think necessary in them should be deferred until the Act itself has been amended in those particulars in which it needs amendment.

RESOLUTION.—The Inspector General of Registration suggests certain amendments in the Deccan Agriculturists' Relief Act and modifications in the Rules framed thereunder.

2. Government concur with the Legal Remembrancer in considering that the existing Rules should not be altered until such amendments as are called for have been made in the Act itself.

3. The sections which form the present report seem to require amendment are sections 2, 57, 71, and 73.

4. According to section 2 an agriculturist is deemed to reside where he chiefly earns his livelihood by agriculture; and as he may have land in more than one village, complications are likely to arise from the definition of the word "reside," and it would appear advisable to omit the definition altogether, in which case the word would be construed as having its ordinary meaning.

5. In section 57 it is not clear who are intended by the parties, but it is apparently meant that both the persons executing an instrument and the persons in whose favour it is executed should attend before the Village Registrar. The section requires revising, and it should be made clear in the first place that it does not apply to cases in which only the surety is an agriculturist, and in the second place that the lender should attend before the Village Registrar in person or by a relative, servant, or dependent holding a power-of-attorney.

6. The amendments required in section 71 form the subject of a separate resolution.

7. Supposing a question to arise before a Village Registrar as to whether a particular individual is or is not an agriculturist, it is not clear whether there is any appeal against his decision. Under section 73 the decision of any court of first instance as to whether a person is an agriculturist is, for the purposes of the Act, final. It is doubtful, however, whether a Village Registrar can be held to be a court of first instance, and, as it is necessary that some person should be empowered to determine finally whether a particular individual is or is not an agriculturist, and as it is also desirable that proceedings under the Act should be as little complicated and lengthened as possible, the section should be so modified as to make it clear that the decision of a Village Registrar is final so far as concerns any duty imposed by the Act upon him.

8. Besides the amendments to existing sections some penal sections seem required to punish offences against registration.

9. From this correspondence, and from the report recently received from the Special Judge regarding the working of the Deccan Agriculturists' Relief Act, it has become apparent that the enactment requires amendment in several particulars.

10. The Legal Remembrancer has already been requested to draft a section amending section 71, and he should now be requested to prepare a draft revising the sections which form the subject of his present report.

11. The Collectors should be asked whether stipends have been assigned to Village Registrars other than Kulkarnis and Sub-Registrars.

ENCLOSURE No. II.

No. 74. From J. R. NAYLOR, Esq., Remembrancer of Legal Affairs, to the Chief Secretary to the Government of Bombay, Judicial Department,—No. 1091, dated the 26th August 1880.

As desired in paragraph 31 of Government Resolution No. 5567, dated 13th instant, and in Government Resolutions Nos. 5568 and 5590, dated, respectively, the 13th and 14th instant, I have the honour to submit herewith the draft of a Bill to amend the Deccan Agriculturists' Relief Act, 1879, and to submit the following observations with regard to it and with regard to the recommendations of the Special Judge.

2. Both the Special Judge and the Inspector General of Registration complain that the definition of the term "agriculturist" in section 2, clause (2) of the Act, is not sufficiently precise. In my No. 888 of 20th ultimo, I expressed my opinion that the definition is as true as it can be made, and that I did not think the Legislature could

improve upon it. Each of the questions put by Dr. Pollen in paragraph 64 of his No. 386* of 7th June 1880 is, it seems to me, capable of a clear and ready answer, as the definition now stands. To my thinking his questions Nos. (1) to (5) and (9) should be answered in the negative, and the rest in the affirmative. If I am correct, the only instance in which the definition is inapplicable, where Dr. Pollen apparently thinks it should be applicable, is the ninth. But in this instance it is not the definition which is at fault. It is the fact that the person in question has changed his profession, which deprives him of the benefits of the Act. I do not think that it is expedient to extend the Act generally to persons who are not at the time *boná fide* agriculturists, but the alterations suggested below (paragraph 4) will probably meet all such cases as those which Dr. Pollen contemplates.

3. Dr. Pollen has not himself suggested any improved definition, and I also am unable to suggest any. I would recommend that the definition be left as it is, but having regard to the number of authorities who are called upon by the Act from time to time to apply it (*vide* paragraph 65 of the Special Judge's No. 386), it seems to me expedient that the Local Government should be invested with powers to prescribe rules for defining more precisely the classes of persons who fall under it. I have inserted an amendment of section 75 in the Bill (section 16) for this purpose, in case Government should approve of this proposal. But I think, too, that section 73 should be simultaneously amended so as to make not only the decision of a court of first instance, that any person is or is not an agriculturist, final, but also a similar decision of a Village Registrar, or of any other person exercising powers, or performing duties under the Act (see section 15 of the draft Bill).

4. The difficulty referred to in the latter part of Dr. Pollen's 65th paragraph in connection with the use of the term "agriculturist" in section 72 of the Act will, in my opinion, best be obviated by amending that section so as to make the extended periods of limitation applicable if the defendant was, at the date of the cause of action, an agriculturist, whether he has since continued to be so or not (see section 14 of the draft Bill). Similar alterations should, I think, be made in sections 3, clauses (*a*), (*y*), and (*z*), 11, 12, and 16 (see sections 2—5 of the draft Bill).

5. But the above is not the only difficulty which section 72 presents. If an agriculturist and a non-agriculturist are jointly liable under one bond or on one and the same cause of action, the greatest inconvenience is likly to arise from the period of limitation being as against the latter only one-half what it is as against the former. This difficulty seems to me to point to the necessity of either amending the limitation law generally and not merely in favour of agriculturists in the four districts to which the Act extends, or else of repealing section 72 altogether.

6. With regard to the Special Judge's paragraph 67 I do not think there is anything to object to in the language of clauses (*w*) and (*x*) of section 3. Any suit for the recovery of money due on a contract which could not be said to be an "engagement for the payment of money," or to fall otherwise under clause (*w*), would fall under clause (*x*). The Special Judge's paragraphs 68—70 relate to questions of construction on which it is the province of the courts themselves to pronounce. There is no need, I think, for the interposition of the Legislature until it is found that the courts have placed a construction on any part of the Act which militates against its general policy. The same remark applies to paragraphs 78—81, 84, latter part of 86, 87—89, 91, 92, 96, 98, 99, 104, and 105 of the Special Judge's letter No. 386.

7. I agree with Dr. Pollen (paragraph 71) that section 4 is altogether superfluous, and I pointed this out† when the Bill was under consideration. But it can do no harm, and it seems needless now to trouble the Government of India again on the question.

† In a demi-official note of 16th September 1879 to the Acting Chief Secretary.

8. As paragraph 2 of section 7 of the Act renders it obligatory on the courts, except for special reasons, to examine every defendant as a witness, plaintiffs who put the courts in motion under the Act are, in my opinion, bound to do all that is necessary on their part to enable the courts to carry out this provision, and I cannot concur with the Special Judge in thinking (paragraph 72) that it would not be justifiable to compel plaintiffs to defray the requisite charges for process-fees and subsistence-money.

* Printed on page 193.

9. I concur in Dr. Pollen's conclusion (paragraph 73) that he has jurisdiction under Chapter VII over execution proceedings of Subordinate Judges in suits under Chapter II. If any of the District Judges should take a different view, and a conflict of jurisdiction thus arises, the High Court may be asked, under paragraph 3 of section 54, to settle the point, and for the reasons stated above in paragraph 6 I do not think it is necessary at present that any alteration should be made in the Act.

10. The scope of the notification to which the Special Judge refers in his paragraph 74 must, of necessity, be held to be co-extensive with the provisions of Chapter II. In exercise of his power of controlling the proceedings under that Chapter, the Special Judge might direct Subordinate Judges to adopt his view in the matter.

11. There is nothing in the Court Fees Act (VII of 1870) that meets the case described by Dr. Pollen in his paragraph 75. It is most desirable, however, that every inducement should be held out to the parties in Second Class Subordinate Judges' Courts, to suits which range in value between R100 and R500, to consent that the provisions of Chapter II shall apply to them. The reduction of the institution fee to one-half its usual amount is perhaps the strongest inducement that could be offered. If the Government of India will consent, there would be no objection, I think, to the passing of an executive order authorizing the courts to give certificates of refund of one-half the amount of the institution fee and of any other court fee that may have been already paid in the above cases, if at any time after a suit has been instituted the parties consent to the provisions of Chapter II being made applicable thereto.

12. I do not think the High Court's judgment referred to in Dr. Pollen's paragraph 76 should be legislated against. It seems to me reasonable that section 12 and the following sections should not be held to affect suits instituted before they became law.

13. The case supposed by Dr. Pollen in his paragraph 77 is one which, I should say, would very rarely happen, and I would not recommend the repeal of the words "not being merely a surety" in section 12. Their primary intention is, no doubt, to discourage agriculturists from becoming sureties at all. But further, whilst it is reasonable to relieve an agriculturist against his own debts, there is no reason why, if he chooses to mix himself up with other people's debts, his liability should be determined by rules other than those which apply to those other people. If the principal debtor is a non-agriculturist, the amount of his debt will be determined by the courts under the ordinary law, and so also will his surety's whether he be an agriculturist or not. If the principal debtor is an agriculturist, the amount of the debt must, in almost every case, be determined under the rules in Chapter III, and the surety will get the benefit of those rules, too, whether he be an agriculturist or not.

14. When a defendant disputes the amount of interest claimed by his creditor, it cannot, I think, be said that he admits the claim. And even if he admits it, paragraph 4 of section 12 gives the court a discretion as to whether or not it should enquire into the history and merits of the case. If, in the exercise of this discretion, it makes such enquiry, section 14, relating to the reduction of unreasonable interest, is applicable. It seems, therefore, that the difficulty described in Dr. Pollen's paragraph 81 can readily be overcome by the courts themselves.

15. With reference to paragraph 82 of the Special Judge's report, I would recommend that the Government of India be asked to remit entirely the court-fee on plaints under section 16. This will remove the difficulty which the Special Judge alludes to, without causing any sensible loss to the revenue, whilst it will greatly encourage ryots to bring suits of this kind which it is most desirable that they should do freely. I concur in the opinion expressed by Dr. Pollen in the latter part of his paragraph 82, but the question is, of course, one for judicial decision.

16. I propose in the annexed draft Bill (section 6) to amend section 19 so as to provide for the *casus omissus* pointed out by Dr. Pollen in his paragraph 83. But with regard to the meaning of the word "recoverable," which must be compared with the words "payable" and "debts due" in the second paragraph of the section, I am of opinion that the meaning is sufficiently clear, and that it is intended that the amount of the agriculturist's still existing liabilities should be the test. Thus, whether the amount of the one or more decrees outstanding against him was or was not originally in excess of R50, if his liability under them is at the present time below R50, paragraph 1 of the section would be applicable. If it is in excess of that sum, paragraph 2 and not paragraph 1 would be applicable, and it would make no difference whether he owed all the money immediately or a part of it in future instalments.

17. Paragraph 85 and the first part of paragraph 86 of the Special Judge's No. 386, and his letter No. 399 (paragraph 52 of the printed correspondence) deal with the important question whether the provisions of section 22 were intended by the Legislature to operate retrospectively. The point has been decided by the High Court in the negative, and I think that, as upon a mere question of construction of the Act, there can be no doubt that that decision is correct. In other places (*e.g.*, section 19), where the Legislature intended to give a provision retrospective effect, the language employed is unmistakeable. I am not aware, however, that the point was specially considered with reference to section 22, and it is, of course, open to Government now if they think fit to move the Government of India to amend that section so as to make it apply to decrees passed before 1st November 1879. I gather from Government Resolution No. 5569 of 13th instant that Government have not yet decided whether to adopt this course or not, and I have, therefore, made no provision in the matter in the annexed Bill. If it is thought expedient to do so, it would only be necessary to have the words "passed either before or after this Act comes into force" inserted after the word "order" in paragraph 1 of section 22 of the Act. But I am respectfully of opinion that there is no sufficient occasion for so wide a departure from the usual rules of legislation as to make this section retrospective, and that it is expedient to let it stand now in the form in which it was originally passed, and to accept the High Court's construction of it. I may add that, if it were amended now, nearly a year after it was first passed, much difficulty would arise with reference to decrees which have been executed in the meantime.

18. With reference to paragraph 90 of Dr. Pollen's No. 386 on the subject of the revision of Village Munsifs' decisions, the intention of inserting section 36 of the Act was to give Village Munsifs' decrees and orders as much finality as possible. Their jurisdiction is limited to very small suits, and it is better to overlook a few mistakes than that there should be a constant uncertainty as to whether their decisions will stand or not. The second paragraph of section 36, by preserving the High Court's revisional jurisdiction under section 622 of the Civil Procedure Code, leaves open a sufficient remedy in any serious case of irregularity if the parties aggrieved care to avail themselves of it.

19. Referring to paragraph 93 of Dr. Pollen's report, I think the meaning of the words "having jurisdiction in the matter" in section 45 must be taken to mean having jurisdiction under sections 523 and 524 of the Civil Procedure Code. If a Village Munsif has no power to deal with a reference to arbitration, his court is not "the court having jurisdiction in the matter." Dr. Pollen's doubt is caused by the fact that the word "matter" is used previously in the same section in a different sense, and the language is, no doubt, awkward, but not, I think, sufficiently so to necessitate its being amended at present. Section 47, as it stands, does, I think, "interpose the compulsory process of conciliation" in cases which a Village Munsif can try when an agriculturist is a party thereto, and I am not able to agree with the Special Judge that this is inexpedient. It does not seem to me advisable to encourage the filing of a multiplicity of small suits about matters which the parties hitherto managed to settle between themselves even though they may be tried * locally and with little or no expense to the parties. The institution of Village Munsifs is in itself, I fear, already calculated to bring about this result, and if the process of conciliation is dispensed with as a preliminary to such suits, their number will be very greatly increased indeed.

* *Vide* Dr. Pollen's further report No. 426 at pages 54, 55 of the printed papers, in which he says—"In my opinion not one in fifty of the suits "would have been instituted had the payment of Court-fees, etc., been compulsory."

20. The omission in section 48, to which Dr. Pollen alludes in his paragraph 94, I propose to supply by the annexed amending Bill (section 8).

21. With respect to the remark concerning section 67, contained in Dr. Pollen's paragraph 103, I may explain that section 8 of the Criminal Procedure Code renders it unnecessary for that section to prescribe by what authority the penalties named in it shall be enforced.

22. The subject of Dr. Pollen's remarks regarding village registration has been already more fully dealt with by the Inspector General of Registration, and disposed of in Government Resolution No. 5568 of the 13th instant, with reference to which it will, I think, be found that I have inserted all the necessary amendments in the draft Bill herewith submitted.

23. Nothing further in the Special Judge's No. 386 seems to call for remark, and it only remains for me to submit my observations on his letter No. 503* (pages 55—57 of the printed papers).

* Printed on page 227.

24. Dr. Pollen's remarks with regard to the "agreement finally disposing of the matter" in dispute between the parties before a Conciliator appear to me to be to some extent based on a misunderstanding of the intention of the Act. Parties who appear before a Conciliator must either come to some agreement for settling their dispute or not. If they come to an agreement, the Act contemplates that such agreement shall be reduced to writing and signed by the Conciliator and the parties. The agreement may be one for referring the question in dispute to arbitration, or may be one "finally disposing of the matter," *i.e.*, one which makes some amicable settlement without the intervention of arbitrators. The words "finally disposing of the matter" do not appear to me to be used in the sense in which Dr. Pollen seems to think, *viz.*, as contemplating an actual settlement of every point of the dispute between the parties. If there is a settlement capable of being given effect to without any resort to arbitration, then I think it may be said that there is an agreement "finally disposing of the matter" within the meaning of the Act, and that the Conciliator is bound to forward it, and the court to receive and deal with it as laid down in the Act.

25. Many of the agreements will, no doubt, be very inartistically drawn, but for this there is no help. The principal object of reducing them to writing and sending them to be filed in courts is that the parties may feel that they are binding upon them. It is probable that but very few of them will ever have to be executed by the courts as decrees.

26. For these reasons I do not think that the Subordinate Judges should be encouraged in any way to question or throw doubt upon the validity of any agreement sent to them by a Conciliator unless at the instance of one of the parties thereto under the provisions of section 44. In the absence of any reasonable objection of either party the Subordinate Judges should, I think, follow strictly the requirements of that section, which says that they *shall* cause the agreement to be filed after the expiry of one month unless cause is shown by the parties to the contrary.

27. I do not think that the questions raised in paragraph 4 of the Special Judge's No. 503 are such as Government can decide upon, or such as the Legislature can be expected to frame express provisions about. In the exercise of the power of control with which the Act invests him over the Subordinate Judges, the Special Judge must regulate their procedure in such matters in such manner as he thinks equitable. But "equity and good conscience," rather than rigid written law, should, I think, guide both him and the Subordinate Judges in dealing with such questions. A promise to pay a time-barred debt, for instance, is not necessarily invalid (see section 25, clause 3 of Act IX of 1872).

28. The remarks in section 5 of the same letter on the subject of section 45 of the Act appear to me to be based on a misapprehension of the meaning of that section. The section lays down that when a Conciliator forwards an agreement for referring a dispute to arbitration, "such court shall cause it to be filed and proceed thereon in manner provided in sections 523 and 524 of the Code of Civil Procedure," *i.e.*, I take it that the agreement is to be filed forthwith and "thereon," *viz.*, after the filing, the provisions of sections 523 and 524 of the Civil Procedure Code are to be followed. So much of section 523 as relates to procedure before filing an agreement is not to be followed, but only that part of it which directs a court how to proceed after the agreement has been filed. A comparison of section 44 with section 45 of the Deccan Agriculturists' Relief Act bears out this construction. If it were meant that the parties to an agreement for referring a dispute to arbitration should have an opportunity of showing cause why such agreement should not be filed in court, there was no reason why paragraph 2 of section 44 should not have been made applicable to such agreements as well as to agreements finally disposing of the matter in dispute. There is no reason why in the one case such notices should be given by the Conciliator, and in the other by the court. It is so much more convenient for them to be given by the Conciliator that if they were thought necessary in the case of agreements for arbitration at all, it is reasonable to suppose that the Legislature would have provided that he should give them.

29. I have provided for the omission in section 47, pointed out in the 6th paragraph of the Special Judge's No. 503, in section 7 of the draft, in case Government should think that that section ought to be amended. But my recollection is that the section was made applicable to decrees passed before the Act became law, principally because, in the trial of the suits in which those decrees were passed, sections 12—14 of the Act were not applicable, and the amounts awarded might, therefore, be taken to be much in excess of what they ought fairly to be. To decrees passed since the Act came into force the same reason does not apply, and seeing that Conciliators have been first appointed from different dates for different villages

and that there is likely, therefore, to be considerable confusion if the amended section is adopted, I am inclined myself to recommend that section 47 be allowed to stand as it is.

30. With reference to paragraph 7 of the same letter, I doubt whether it is expedient to lay down a hard-and-fast rule limiting the time which a Conciliator should keep an application pending before him to three months. That period is, in my opinion, far too long for all ordinary cases, but exceptional cases might arise in which it would be insufficient I think it would be best, at first at any rate, for Government not to fix any period, but for the Special Judge, in the exercise of his lawful control over Conciliators, to instruct them as to what he considers to be "a reasonable period" within the meaning of section 46.

31. With reference to Government Resolution No. 5570 of 13th instant, I beg to state that I have been from the first opposed to the insertion of any provision in the Act for excluding pleaders from practising in the Subordinate Judges' Courts. But it is too early, I think, yet to judge of the effect of section 68 of the Act, and I do not suppose the Government will be inclined after so short an experience of its working to propose to the Government of India to repeal it. I would suggest, however, that the Special Judge be requested to give his attention to the question of reducing the number of times that parties are obliged to come to court. The necessity for frequent attendance at court is one of the greatest evils of our judicial system. Some improvement will probably take place when the Subordinate Judges hold their courts from time to time at different places, but much might probably be done in the way (1) of preventing too frequent postponements, and (2) of taking from each party the requisite payments for batta, etc., and of the formal applications he need make at once on his first appearance or on any adjourned date on which for other purposes he must necessarily appear. The courts' officers might be instructed to do what they can to make things easy for parties who are not allowed the aid of Counsel, and the same punctiliousness ought not to be enforced in their case which courts have got into the habit of insisting upon in the case of parties who, if they choose, can be, and who generally are, represented by pleaders.

32. As the period allowed by section 71 of the present Deccan Agriculturists' Relief Act for the registration of old deeds will expire on the 1st November next, it is desirable that the amending Act should become law before that date. And as the people will have no means of knowing that Government propose to extend that period to the 1st April 1881 until the Bill is published, I would suggest that the Government of India be requested to give it very early consideration and to introduce it, or such Bill as they may think fit to substitute for it, into the Legislative Council of the Governor General as soon as possible.

33. To facilitate reference, I append a copy of the Deccan Agriculturists' Relief Act showing how it will stand if the amendments I propose in the annexed Bill are approved.

DRAFT.

A Bill to amend the Deccan Agriculturists' Relief Act, 1879. No. 75.

For the purpose of amending the Deccan Agriculturists' Relief Act, 1879, it is hereby enacted as follows:—

Amendment of section 2.

1. The last fourteen words of section two are repealed.

Amendment of section 3.

2. In clause (*a*) of section three, the words "by an agriculturist" are repealed, and for the words "the provisions hereinafter contained" the words "section sixteen of this Act" shall be substituted.

In each of the clauses (*y*) and (*z*) of the said section before the words "an agriculturist" the words "or was when the property or any portion thereof was mortgaged" shall be inserted.

Amendment of section 11.

3. In section eleven before the words "an agriculturist" the words "or was, at the date of the cause of action," and before the word "agriculturists" the words "or who, at the date of the cause of action were" shall be inserted.

Amendment of section 12.

4. In section twelve before the words "an agriculturist" the words "or was, at the date of the cause of action," shall be inserted.

Amendment of section 16.

5. In section sixteen after the word "agriculturist" the words "and any person who, when his liability or any portion thereof was incurred, was an agriculturist" shall be inserted.

Amendment of section 19.

6. In section nineteen for the words "there is no other claim against him" the words "the whole of the judgment-debts due by him amount to less than fifty rupees," and for the word "sum" where it occurs the second time, the word "debts" shall be substituted.

Amendment of section 47.

7. For section forty-seven, the following section shall be substituted (namely):—

Suit or application for execution not to be entertained by Civil Court unless such certificate is produced.

47. No suit to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party and no application for execution against any such agriculturist of a decree passed before the date on which a Conciliator was first appointed for the local area in which such agriculturist resides shall be entertained by any Civil Court, unless the plaintiff or the judgment-creditor produces such certificate as aforesaid in reference thereto.

Amendment of section 48.

8. In section forty-eight after the word "suit" the words "or application" shall be inserted.

Amendment of section 57.

9. For section fifty-seven the following section shall be substituted, namely:—

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

57. When any persons residing in any such local area desire to execute any such instrument, and any one of such persons not being a surety merely of the principal executant, or of one of the principal executants, is an agriculturist, the intending parties to the said instrument shall present themselves before the Village Registrar appointed for the area in which such agriculturist, or, when there are several such agriculturists, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving from the parties the fee (if any) prescribed by the Local Government in this behalf and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud or causing it to be so read in the hearing of the parties shall require the executants to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall at the time of execution be attested by the Village Registrar, and also if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Every executant of any such instrument must appear for the purposes of this section in person before the Village Registrar. Any person in whose favour any such instrument is executed may appear before the Village Registrar in person, or may employ any relative, servant or dependant whom he has duly furnished with a power-of-attorney defining the extent to which he is empowered to act, to appear and act on his behalf.

Amendment of section 58.

10. In section fifty-eight for the words "all the parties to any instrument have executed it" the words "any instrument has been completely executed" shall be substituted.

Addition of new sections after section 63.

11. After section sixty-three the following sections shall be inserted (namely):—

Penalty for incorrectly writing, registering or copying instruments with intent to injure.

63*a*. Every Village Registrar who writes, or causes to be written, or registers any instrument, or makes or causes to be made any copy of an instrument or of any entry in a register in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for certain other offences.

63*b*. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both:—

Making false statements before Village Registrar.

(*a*) Intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any Village Registrar, in any proceeding or inquiry under this Act;

(*b*) Falsely personates another false personation, and in such assumed character presents any document, or makes any admission or statement to a Village Registrar or does any other act in any proceeding or inquiry under this Act;

Abetment of offences under this Act.

(*c*) Abets within the meaning of the Indian Penal Code anything made punishable by this Act."

Amendment of Section 71.

12. For section seventy-one the following section shall be substituted (namely):—

All mortgages executed before 1st April 1880 to be registered by Section 17 of Indian Registration Act, 1877, to be registered.

71. Every instrument executed before the 1st April 1880, and purporting to create any mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be deemed to be an instrument required by Section 17 of Indian Registration Act, 1877, to be registered.

Any such instrument which before the said date was not so required to be registered may, notwithstanding anything contained in the said Indian Registration Act, 1877, be registered by the Village Registrar appointed for the area in which the agriculturist, or any one of the agriculturists to whom the immoveable property affected by the instrument belongs resides, provided the same be duly presented for this purpose before the 1st April 1881. Such instruments shall be registered in accordance with such rules as may be prescribed in this behalf by the Inspector General of Registration, with the previous sanction of the Local Government under Section 61 of this Act, and every instrument so registered shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877.

Nothing in this section applies to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity.

Certain instruments registered before the passing of this Act to be deemed to have been duly registered.

13. Every such instrument as is described in Section 71, as so amended, which before the passing of this Act has been registered by a Village Registrar in accordance with rules prescribed in this behalf by the Inspector General of Registration with the previous sanction of the Local Government shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877.

Amendment of Section 72.

14. In section seventy-two the words "against an agriculturist" are repealed, and after the word "act" where it first occurs, the words "against a person who at the date of the cause of action was an agriculturist" shall be inserted.

Amendment of Section 73.

15. For section seventy-three the following section shall be substituted (namely) :—

Decision as to whether person is agriculturist final.

73. The decision of any court of first instance or of any person exercising any power or performing any duty under this Act that any person is or is not an agriculturist shall, in all subsequent proceedings in respect of the same matter, for the purposes of which such decision was passed, be deemed to be final.

Amendment of Section 75.

16. For section seventy-five the following section shall be substituted (namely) :—

Additional power to make rules.

" 75. The Local Government may from time to time make rules :—

(a) for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of this Act, and

(b) generally for carrying out the provisions of this Act.

Interpretation of " section."

17. In this "section" means section of the Deccan Agriculturists' Relief Act, 1879.

Enclosure No. III.

From Dr. A. D. Pollen, Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay, Judicial Department,—No. 386, dated Poona, the 7th June 1880. No. 76.

As directed in paragraph 12 of Government Resolution No. 183 of the 12th January 1880, I have the honour to submit a report as to the work done during the fair season by myself and the two Assistants appointed under Act XVII of 1879, and as to the manner in which the Act has hitherto operated.

Dates of assuming charge.

2. I assumed charge of my duties as Special Judge on the 5th January at Poona. Mr. Larken, the special Assistant Judge, joined his appointment on the 12th idem after office hours; and Rao Bahadur Vishnu Moreshwar Bhide, the Special Subordinate Judge, took charge of his new duties on the 15th idem before office hours.

Preliminary arrangements.

3. From the 5th to the 21st January my time was occupied in making all the needful preliminary arrangements in connection with the organization of an office establishment for myself and my two assistants. Government, having decided not to fill up the acting vacancy in the office of Senior Assistant Judge at Sholapur, were pleased to place at my disposal as many of the members of that establishment as could be spared. I had, in consultation with the District Judge of Poona, to select the available karkuns, clerks, and peons, and then to distribute them between my own and my Assistants' offices; five persons were transferred from the Poona Court; and the result was that the only new hands which it was found necessary to employ were four peons on Rs. 8 a month and two menials on Rs. 7; while on the other hand, a saving of about Rs. 1,400 a month was effected by the temporary abeyance of the office of Senior Assistant Judge at Sholapur. I had also to arrange for obtaining office tents,

articles of office furniture, a supply of stationery, books, maps, standard forms, a permanent advance, and sundry other minor details. This involved correspondence with Government, the District Judge of Poona, the Court at Sholapur, the Central Press, and other officers, but by the 21st January all my preliminary arrangements were completed; our three new offices were sufficiently manned and supplied, and I was at liberty to commence my tour of inspection.

4. I selected Sholapur as my starting point, as being the place where I was to find my tents, and also as being the most distant court in the four districts, having arranged that Mr. Larken* was to begin his work of inspection in the Satara District, and Mr. Bhide* his in the Ahmednagar District. Before leaving Poona I held a conference, at which Messrs. Larken, Bhide, and the First Class Subordinate Judge of Poona were present, when we discussed and considered many questions in connection with the new Act and the best method of carrying out the work of revision. I had also to reply to numerous references which began to pour in upon me from the Subordinate Judges and others on doubtful points of procedure and interpretation.

Nature of Special Judge's duties.

5. Before proceeding to mention in detail the work that has been done, I would refer briefly to the nature of the duties which are imposed by the Act upon the Special Judge and his Assistants. Previously to the passing of the Act only a few of the Subordinate Judges (*viz.*, six in the Ahmednagar and two in the other districts) were entrusted with Small Cause Court power: but Chapter II of the Act conferred upon all the Subordinate Courts in the four districts an enlarged summary jurisdiction, embracing not only ordinary suits of the small cause type, but also important classes of suits relating to mortgages and suits by agriculturists for accounts, the pecuniary limit being Rs. 500 in the Court of a Subordinate Judge of the first class, Rs. 100 in the Court of Subordinate Judge of the second class, increasable by consent to Rs. 500. Chapter IV of the Act also confers a very extended and summary insolvency jurisdiction upon the Subordinate Courts in the case of agriculturists. By way of compensation for the withdrawal of the right of appeal and of safeguard in consequence of the bestowal of such summary power, the Special Judge was appointed to inspect, supervise, and control the proceedings of the Subordinate Judges under Chapters II and IV of the Act: and the intention of Government was that the Special Judge should move rapidly about from court to court, examining the records on the spot, and rectifying all failures of justice that might be brought to his notice. Chapters V and VI of the Act provided also for the appointment of Village Munsifs and Conciliators, and it was made part of the duty of the Special Judge to inspect, supervise, and control the proceedings of these functionaries also. The functions of the Special Judge under the Act do not extend any further than this. To aid him in the work of inspection and supervision, two Assistants have been appointed under section 52 of the Act.

6. The inspection and control of the Subordinate Courts in the exercise of their new summary jurisdiction is clearly the most important portion of our duty; and to this I shall first refer touching afterwards on the Village Munsifs, Conciliators, and other matters in connection with the working of the Act.

Inspection of the Subordinate Courts.

Special Judge's tour.

7. My tour commenced on the 21st January, and, as all the civil Courts in the four districts were closed for the annual vacation on the 19th April, I have had during the fair season only about three months for the work of inspection. During that time I personally visited 18 out of the 24 courts in the four districts, inspecting the records of all proceedings under Chapters II and IV of the Act from the 1st November 1879 up to the date of my visit. The remaining six courts I was unable personally to visit before the vacation, but since then I have sent for and personally examined the records of all proceedings in those courts falling under the Act. Appendix † A is an itinerary of my tour from the 21st January to the 31st April. It shows that I travelled during that time 1,322 miles in regular stages, without counting the

* The Reports of these gentlemen have not been printed in this Selection.

† Not printed.

many journeys I took from my various camps to visit Village Munsifs and Conciliators. The month of May I spent at Mahableshwar, completing the examination of the records of suit which had not been examined during my tour, collating the results of my work during the travelling season, arranging my office records which have already grown bulky, and collecting material for this report.

Mr. Larken's tour.

8. Mr. Larken has personally visited eight out of the fourteen Subordinate Courts in his two districts of Poona and Satara, inspecting all the decided cases up to the date of visit. Appendix B* is an itinerary of his tour. I regret to have to report that on two occassions during the travelling season Mr. Larken was incapacitated from work by very serious illness. On one occasion his illness lasted some weeks, and though he was able during the part of that time to do office work, he was quite unfit for rapid travelling. Hence he has been prevented from visiting as many courts and from seeing as many Village Munsifs and Conciliators as he would otherwise have done. He was able, however, to examine in the record-rooms of the District Court the record of the Subordinate Courts which he could not personally visit.

Mr. Bhide's tour.

9. Rao Bahadur Vishnu Moheshwar Bhide has personally visited and inspected all the ten Subordinate Courts in the two Districts of Ahmednagar and Sholapur under his charge. Appendix C* is the itinerary of his tour. I have urged upon him the necessity of moving about more rapidly; his halts seem to have been longer than, judging from my own experience, seemed to me to be necessary.

Mode of inspection.

10. I have now to say a few words about the mode of inspection and supervision. One of the first matters that engaged my anxious attention was to devise a form of return that, without involving too much labour in its preparation, would sufficiently convey to me an idea of the quantity of work done by the Subordinate Courts and of the manner in which the special provisions of the Act were being carried into effect, and would, I trusted, facilitate the work of revision. After much deliberation I adopted three forms of monthly returns, which I directed should be punctually submitted to me by each Subordinate Judge through the Assistant in charge of the district. I beg to forward copies of the forms which I prescribed—*vide* Appendices D, E, F. The first form (Appendix D) relates to suits falling under Chapter II of the Act. It aims at classifying the suits according to the classification adopted in clauses (*a*), (*w*), (*x*), (*y*), and (*z*) of section 3 of the Act, and, as regards clauses (*w*) and (*x*) at distinguishing suits as against agriculturists and non-agriculturists. It then shows, according to their respective classes, the number of suits instituted, disposed of and remaining for disposal and also the manner of disposal. It also aims at showing in a general way how the novel provisions of certain particular sections of the Act have worked. The headings of the different columns speak for themselves. The second form (Appendix E) relates to the execution of decrees which have been passed under Chapter II. It shows the numbers of applications received, disposed of, and remaining, and also the working of certain special sections of the Act relating to execution. It is one of the doubtful points—to which I must subsequently refer—in connection with the Act, whether the Special Judge has any revisional or controlling powers over the execution of decrees, even though the decrees may have been passed in suits which fall under Chapter II. The reason of the doubt is that Chapter II deals only with suits, and is silent (as is also Chapter VII) as to execution proceedings. I have gone, however, on the assumption that I have the power, for it seems anomalous that the Special Judge should be able to revise and control the proceedings of the Subordinate Judges up to decree, and have no such power as regards their proceedings after decree. As this, however, is but one of the many doubtful points that have arisen under the Act, I must allude to it again in that part of my report which deals with the practical difficulties and shortcomings of the Act. The third form (Appendix F) relates only to the proceedings in insolvency under Chapter IV, and is designed to show the number of such proceedings, the manner of disposal, and the working of certain special sections. I have received complete returns from the 1st January up to the closing of the courts for the vacation: and they enable me to give certain statistics, which will find their place in a subsequent paragraph. I have not yet been able to make up my mind whether the forms of returns are sufficiently useful or reliable to compensate for the

* Not printed.

labour of preparing them: but I propose to continue them for the present, unless Government consider that they may be dispensed with. The next thing that seemed to be necessary, to facilitate the work of inspection, was to devise some satisfactory means of distinguishing the cases falling under Chapter II of the Act from the other suits in which an appeal would lie, and which would come within the jurisdiction of the District Judge. I at first thought that the best plan would be to keep a separate register of such suits or to divide the regular register into two separate parts, but, on consulting the High Court, I found, as indeed I had thought probable, that there was a legal objection to such a course, the Civil Procedure Code contemplating that there should be a *single* register for all suits. I then with the consent of the District Judges gave directions that all suits falling under Chapter II should be distinguished in the margin on the register and on the plaint by a large asterisk, suits against non-agriculturists being marked with a black asterisk, and all other suits falling under the chapter with a red. This plan, when intelligently followed, I have found to work satisfactorily. I likewise directed that the records of suits falling under Chapter II should be kept separately from other suits and sent to the record-room in separate bundles, so that requisitions for their production might be at once complied with, without occasioning loss of time in sorting out and examining. But here again I was met with the difficulty that all suits decided in one month had to be sent to the record-room of the District Court before the 10th of the following month; and hence it must have happened that, on visiting a court about the middle of the month, there would be hardly any decided suits in the court to examine. I anticipated that at the first start I would receive very few written applications for review; and I perceived that the only effectual method of exercising my revisional powers was by examining on the spot a large percentage of decided cases, and, if I saw cause for interfering, by giving an opportunity to the interested parties for appearing and making themselves heard there and then. This I could not do if the decided cases were sent off each month to the District Court record-room. I therefore at once represented the matter to the High Court, and suggested that the records of decided cases falling under my jurisdiction should either not be sent to the record-room until after periodic visit of inspection by myself or one of my Assistants, or else that they should be sent quarterly instead of monthly. The High Court thereupon promptly issued a Circular Order that the records in such cases should be sent quarterly instead of monthly as heretofore. I should have preferred the adoption of my first suggestion, but hitherto I have found that the new rule in practice sufficiently meets my requirements. Having thus prescribed a form of monthly return, a distinguishing mark and a separate classification for the cases liable to my revision and having secured their retention in the local courts till the end of each quarter, I felt myself to be in a better position for proceeding with the work of examination and control; and in the absence of applications calling attention to particular decisions, I set myself down at each court I visited to peruse and carefully scrutinize the record of all pending and decided suits falling under Chapter II. I devoted my attention particularly to see that the special provisions of the Act were strictly observed, and that the notifications regarding the reduction of court-fees and process-fees were carefully attended to. I kept a note of all errors, irregularities of procedure, and doubtful points, and when the examination of a court was concluded, I invariably addressed a Yadi to the Subordinate Judge calling his attention to all the instances of mistaken procedure, negligence, irregularities, and doubtful law or practice which had come under my observation, calling for special report or further information wherever it seemed necessary for me to do so. I generally made a point of examining some of the cases in the presence of the Subordinate Judge himself, and I, in every case, had personal interviews with the Subordinate Judges in which we discussed at length the doubtful points connected with the Act. The pleaders also in the several courts were, as a rule, anxious to discuss with me their doubts and difficulties in the same connection. Having found that this system of inspection answered fairly well, I lost no time in communicating its details to my Assistants, and suggested the adoption by them of some similar system.

Results of inspection.

Decrease in number of suits.

11. Having described my method of examination, I now proceed to mention the results. The first and most striking effect arising from the operation of the Act, that is made evident by an inspection of the records of the courts and of the monthly returns, is the very marked—and I may say altogether abnormal—diminution in the number of suits instituted in all the courts in the four districts since the 1st November last. The following statement in tabular form will enable Government to perceive at a glance the proportion between the number of

suits instituted from the 1st November last to the 20th April, and the number instituted in the corresponding months of the preceding four years :—

Court.	Suits instituted between 1st November and 20th April				
	1875-76.	1876-77.	1877-78.	1878-79.	1879-80.
Poona	...	642	619	645	576
Sholapur	1,073	856	1,101	997	610
Ahmednagar	436*	333*	1,271	1,352	737
Satara	984	828	458	701	316
Junnar	885	814	489	573	382
Pandharpur	909	568	527	493	253
Patas	842	705	597	510	267
Vita	732	481	268	298	185
Khed	904	881	614	406	182
Wai	879	843	348	586	208
Karad	1,107	881	434	568	171
Rahimatpur	1,024	828	575	605	274
Madha	894	534	543	481	156
Sangamner	1,152	1,062	502	534	175
Vadgaon	837	791	703	583	185
Ashta	1,053	904	654	822	250
Tasgaon	586	389	494	610	198
Kadi	967	525	599	585	180
Nevasa	969	762	447	582	174
Talegaon	974	669	630	696	160
Rahuri	1,159	788	565	943	155
Barsi	657	494	495	448	106
Dahivadi	571	358	323	291	76
Shrigonda	...	...	291	269	61

* There was a Small Cause Court in these years.

The decrease, startling as it is in all the courts (except Poona for which, however, there is a special cause), is more marked in those courts which have to do with an almost exclusively rural population; and it is less observable in those courts which have within their limits large towns or cities or other trading centres; and I have placed courts of the latter description, *e.g.*, Poona, Satara, Sholapur, Ahmednagar, Pandharpur, Junnar, Patas, at the top of the tabular statement. The reason of this distinction doubtless is that though some provisions of the new Act affect all classes, yet the most numerous, most novel, and most important provisions of the Act affect agriculturists exclusively. In the Poona Court there is no very striking decrease, but the explanation of this lies in the fact that suits against agriculturists, which would otherwise have been brought in the local Small Cause Court at Poona, have, since the new Act came into force, been necessarily instituted in the First Class Subordinate Court. In the first five courts on my list the decrease does not exceed 50 per cent. of the average of former years; but in the other courts the decrease varies from about 50 to 85 per cent., roughly speaking.

Causes of decrease.

12. I have sought for information from all quarters as to the true causes of this remarkable decrease, and I find there can be no doubt that it has been mainly caused by the introduction of the new Act. Nor is this a circumstance that can occasion any surprise. It is probable, I think, that even if the new Act had not been introduced, there would have been, in the period under notice, a slight diminution in the number of institutions as compared with previous years, for the effects of the famine and successive bad seasons have been making themselves felt more and more; and several of the most experienced Subordinate Judges whom I have consulted have mentioned the increased poverty of the people arising from the recent famines as one of the many causes contributing to bring about the diminution referred to. However this may be, the leading cause is to be found in the operation of the new law, which contributes in many different ways to the same result. It was of course foreseen that the enlargement of the period of limitation provided for in section 72 of the Act in the case of suits against agriculturists would naturally have the effect of temporarily checking litigation; and it is undoubtedly this extension of the time allowed for bringing suits that has been the most potent factor in bringing about the immense reduction to which I am now alluding. There are also other causes at work springing likewise from the new law to which I must briefly refer, though it is impossib'e even to conjecture the

Poverty arising from periods of scarcity.

Enlargement of period of limitation.

Other causes.

comparative or proportionate effects of their action or influence. Chief among these causes must be reckoned the uncertainty produced in men's minds as to the scope and probable effects of the new law, arising from doubt or ignorance as to how its new provisions might be worked. Creditors are naturally unwilling to have the back history of their transactions with their debtors opened up; in many cases they feel that they cannot produce the necessary proofs; they are uncertain what amount may be ultimately awarded to them; they fear the exercise of the discretionary power vested in the courts by section 19 of the Act of granting discharges in the case of petty debts; they regard with uneasiness the possible effects of the insolvency provisions of the law; they have no precedents to guide them; but, above all, they are deterred from having resort to the courts by the knowledge that even if they are successful in establishing their claims, their chances of recovering the amount of their decrees are minimized by the entirely new provisions of sections 21 and 22 of the Act, which give to an agriculturist immunity from arrest, and to his property, unless specifically pledged, exemption from attachment; the exclusion of pleaders and the consequent compulsory personal attendance, with its concomitant trouble and loss of time, it may be at numerous stages of a suit, also exercises a deterrent influence on creditors. The combined effect of all these causes tends to diminish the number of suits, and when considered along with the enlargement of the period of limitation, sufficiently accounts for the marked decrease in suits against agriculturists, which of course would, under ordinary circumstances, form the bulk of all suits in the four affected districts. The difficulties or delays occasioned by the interposition of the compulsory conciliation system have as yet had no appreciable effects, as I will point out when subsequently dealing with this branch of my subject. Most of the causes I have referred to are, I believe, but temporary in their action; and it was foreseen in the debates in Council that there would be some temporary derangement consequent on the introduction of the Act.

Percentage of cases examined.

13. One result of the decrease of institutions and consequent decrease of decisions is that I and my Assistants have been able to examine the records of nearly all the decided cases—above cent. per cent. It was anticipated by the introducer of the Bill that the system of revision would bring about 50 per cent. of the decided suits under the ken of the revising officer. We have been able to do more than that. We have inspected and scrutinized all the decided suits and a large number of the pending suits. I do not suppose that a dozen decided suits have escaped a careful scrutiny at our hands.

Proportion of suits under Chapter II to all suits.

14. Of the 6,037 suits that have been instituted during the period under report (*viz.*, from 1st November 1879 to 20th April 1880) no less than 4,100 suits fall under the provisions of Chapter II of the Act, and therefore under my supervision, thus constituting more than two-thirds of the entire number of suits.

Analysis of institutions.

15. I am only concerned with the 4,100 suits which fall under Chapter II, and the returns which I have received from the Subordinate Judges since the month of January last enable me to offer an approximate analysis of the institutions with reference to the classification of suits adopted in section 3 of the said chapter.

16. I find that only 13 suits by agriculturists for an account under clause (*a*) of section 3 have been instituted. There have been 2,206 money suits against non-agriculturists falling under Clause (*w*), and 1,400 money suits against agriculturists falling under the same clause. There have been 1,832 suits against non-agriculturists under clause (*x*), and 158 suits against agriculturists under the same clause. There have been 138 suits for foreclosure, etc., under clause (*y*), and 23 suits for redemption under clause (*z*).

17. It will thus be seen that the bulk of my work has consisted in the examination of the ordinary bond suits, and that the number of account and mortgage suits has been surprisingly small. I expect, however, a very large increase in the number of such suits when the provisions of the new Act become more generally known, and I shall give my reasons for this belief when I am alluding to the applications received by me in the course of my tour.

Disposal of suits.

18. Though the institutions under Chapter II have only amounted to 4,100, the decisions only come up to 1,879, the reasons being (1st) that the old suits pending on the 1st November last were taken up before suits falling under the new Act, and (2nd) because many of the new suits have had to be adjourned again and again in order to procure the attendance of the defendants in accordance with the provisions of section 7 of the new law. Another reason seems to be that most of the files having been reduced to a very low figure (comparatively

speaking), the Judges were not in a hurry to dispose of too many suits. I have done my best to insist on as speedy a disposal of suits as is compatible with a careful inquiry into the merits.

19. An analysis of the disposals may be found interesting, as showing not only the manner of disposal, but also the manner in which certain provisions of the Act have been enforced.

Analysis of disposal.

The following statement shows how many suits of each class have been disposed of:—

Suits by agriculturists for an account under	cl. (*a*) =	0
Suits against non-agriculturists under	cl. (*w*) =	1,140
Ditto ditto ditto	cl. (*x*) =	52
Suits against agriculturists under	cl. (*w*) =	603
Ditto ditto ditto	cl. (*x*) =	43
Suits for foreclosure, etc., under	cl. (*y*) =	33
Suits for redemption under	cl. (*z*) =	2
		1,879

20. Of these 1,879 suits, only 360 were decided *ex-parte*. This shows a vast improvement over the former state of things, in which upwards of 90 per cent. of bond suits used to be decided *ex-parte* every year. Though the number of *ex-parte* decisions thus compares very favourably with the figures of former years, it is doubtless still far too high, and shows that section 7 of the Act has not been observed as strictly as it should have been; but the reason of this is that at first the Subordinate Judges very generally misunderstood the Act, and fancied that the provisions of this section applied only to suits in which agriculturists were parties. To this misunderstanding I shall have occasion subsequently to allude.

Ex-parte decisions.

21. In 475 of the decided suits the claim was admitted by the defendants; in 245 the claim was withdrawn or compromised; while in 344 cases the claim was thrown out for default. Only 351 suits were contested, in 193 of which the claim was wholly awarded, in 129 partly awarded, and in 32 rejected.

Admissions. Withdrawals. Compromises. Dismissals for default. Contested suits.

22. In 804 cases the defendants were personally examined as required by section 7 of the Act. In 106 suits against agriculturists, the past history of the transaction was inquired into in the manner contemplated by sections 12 and 13. In 397 suits payment of the amount decreed was ordered by instalments, which shows that free advantage has been taken by the courts of the liberty allowed by section 20. In fact, the defendants themselves, even when admitting the claim, ask for instalments in a large majority of suits, and, generally speaking, the courts have been ready to accede to the request.

Examination of defendants.

23. In the course of my inspection I discovered many irregularities of procedure and many instances of carelessness, which in every case I brought to the notice of the Subordinate Judge concerned. I also found that a considerable degree of misapprehension existed among the Subordinate Judges as to the true intention and application of the Act, especially during the first two or three months after its introduction. The misunderstanding was pretty general in all the districts except Ahmednagar, where the District Judge, Mr. Wedderburn, had held a judicial conference in November last, at which the various doubtful points were discussed and a right decision on most of them was arrived at. Hence I have found far fewer mistakes in the Ahmednagar courts then in the court of the other three districts. Most of the Subordinate Judges were misled by the preamble of the Act, and were therefore for some time, at first, under the erroneous impression that the provisions of the Act affected those suits only to which agriculturists were parties, whereas the provisions of Chapter II and other parts of the Act apply to numerous and important classes of suits, whether the parties thereto be agriculturists or non-agriculturists. I refer to suits of the description mentioned in section 3, clauses (*w*) and (*x*). The general nature of the mistakes was as follows: The defendants were not examined as required by section 7. Written statements were suffered to be put in contrary to section 8. Pleaders were permitted to appear contrary to section 68. Various provisions of the Civil Procedure Code were systematically disregarded, costs often wrongly imposed, summonses improperly served, roznamas imperfectly written, decrees carelessly framed and calculated, and the notifications of the Government of India and of the High Court reducing the amount of court-fees

Mistakes.

and process-fees not unfrequently overlooked. I might, in many instances, have altered or modified decrees; but the mistakes were so numerous and the modifications would have been so trifling that, in the absence of any applications or complaints, I purposely abstained from doing so, thinking that, on the first application of a new law, such as the Deccan Agriculturists' Relief Act, it would be better to aim at securing correctness and uniformity of procedure by the method of remark and admonition for future guidance than to create distrust and confusion by interfering in a large number of decrees, respecting which no complaint had been made. One good effect which, I feel confident, will result from the minute and constant supervision of the records is that much greater care will be exercised not only by the Subordinate Judges themselves in the trial of their cases, but also by the subordinate members of their establishments in the performance of such clerical and ministerial duties as fall to their lot. I have seen proof of this already, for I notice that the cases which I have more recently examined are more carefully disposed of, and the records are more accurately kept than was the case at first. The class of cases which it is my duty to supervise is for the most part of a kind that rarely, if ever, under the old system came under the notice of any supervising authority. I think, therefore, that the substitution of a system of inspection and revision on the spot for the old system of appeal need not be regarded with any apprehension. Every advantage that might have been gained by appeal can be as effectually, and less expensively, gained by revision, and additional advantages will be secured.

Beneficial result of revision.

24. The number of applications for revision actually presented to me by dissatisfied litigants has been unexpectedly small. During the period under report I have only received three such applications; but I anticipate that as the work increases and the provisions of the Act become more widely known, there will be a very large increase in petitions for revision. Such petitions are sometimes presented by the applicants in person, and sometimes sent by post. As my office is peripatetic, I always accept petitions sent by post. On receiving a petition, I send for the record of the case, and on perusing it if I see no reason for interfering, I endorse on the petition an order rejecting it with my reasons therefor. If, on reading the record, I see any grounds for holding further inquiry, I fix a future day when my camp is to be in the neighbourhood, and inform the parties by notice, and on the appointed day I hear them if they are present. I mention my mode of procedure in such cases because no procedure is laid down in the Act, and in the debates in Council a fear was expressed lest the work of revision might be performed in a perfunctory manner. Of the three regular applications for revision I rejected two after reading the papers and without calling on the opposite party to appear. In the third case I issued notices to both parties, who appeared in person on the appointed day, and stated their respective cases, and I substituted a new decree modifying the decision of the Subordinate Court. I did not find occasion to reverse any of the decision *proprio motu*.

Applications for revision.

Procedure in revision.

25. Ten cases have been referred to me for revision by my Assistants under section 53. In some of them I declined to interfere, as the errors discovered were formal or technical, and did not appear to me to have worked a failure of justice. Of others I have deferred the disposal till my next visit to the Court concerned, so that I may hear the parties on the spot.

Cases referred.

26. Section 51 of the Act empowers the Special Judge to transfer suits to his own or some other file, and also to dispose of cases sitting with a Subordinate Judge as a Bench: and section 52 allows him to delegate the said powers to his Assistants. I accordingly have authorized Messrs. Larken and Bhide to exercise the same powers. It is always improbable that during the two or three days which generally suffice for a visit of inspection to a Subordinate Court, any cases worthy of being tried by a Bench should happen to be fixed for hearing. In the course of my tour I invariably enquired whether there were any such cases on the board, but I never found any. I therefore directed all the Subordinate Judges whenever any case might arise which, in their opinion, was of sufficient importance to be heard by a Bench, to let me know of the date fixed and to send me a copy of the plaint, in order that I might, if necessary, arrange for attending personally at the Court, or else arrange with one of my Assistants to do so. This plan will, I think, answer satisfactorily and will prevent the provisions of section 51 from becoming a dead letter. The results in the short period under report have been as follows: I disposed of two somewhat complicated suits sitting as a Bench with the First Class Subordinate Judge of Poona in April last. Mr. Bhide disposed of two suits sitting with the Subordinate Judge of Sholapur and of one suit sitting with the Subordinate Judge of Rahuri.

Sittings in Bench.

Mr. Larken has not had occasion to sit with a Subordinate Judge for the disposal of any suits. No applications have been received by me asking for transfers of suits.

Execution proceedings in cases of decrees under Chapter II.

27. As the decrees passed in suits falling under Chapter II have all been more or less recent, the numbers of applications for executing such decrees have been naturally very few. In the course of my tour I had hardly any darkhast proceedings to inspect. The execution returns furnished to me monthly by the Subordinate Judges enable me, however, to give the following figures:—Only 72 darkhasts have been presented in the period under report, 32 of which have been disposed of, and the remainder are pending. Only in one instance has a Subordinate Judge made use of the power bestowed by the first paragraph of section 19 of granting a discharge in the case of petty debts under R52; in no instance as yet has advantage been taken of the provision of section 22 which enable a court to direct the Collector to manage the judgment-debtor's property for a term of seven years.

Insolvency proceedings.

28. The ryots have not shown themselves at all keen in taking advantage of the benefits opened out to them by Chapter IV—the Insolvency Chapter of the Act: nor can it be held altogether a matter of regret that they have not been so. The natives of tho mofussil evince the strongest possible repugnance to being considered "nadar" or insolvent, and the feeling seems to be bound up with their religious and social customs and observances. They consider that to be declared insolvent would hopelessly damage their credit through all their future. Throughout the prolonged and elaborate discussion on the subject there has been a very striking unanimity of opinion as to the benefits of a general insolvency law for the mofussil, and perhaps in course of time the Native mind may reconcile itself to the idea; and it stands to reason that it must be a good thing that those who are so deeply involved as to be beyond the hope of extrication should be allowed by law an opportunity of extricating themselves after a reasonable period, and then commencing life afresh. But time only will reveal whether the Native debtor is likely to show himself sensible of the benefit, and those whom I have consulted on the subject do not seem to be at all sanguine. If the Collectors or Assistant Collectors could induce a few hopelessly involved debtors to come forward and thus set the ball rolling, it might possibly have a good effect, but I hesitate to recommend any heroic proceeding of this kind. During my tour I did not find that any proceedings in insolvency had been instituted by debtors or directed by the courts, but I always took occasion to discuss with the Subordinate Judges and to make as widely known as possible to the public the true aim and intention and the policy of the insolvency provisions of the Act; and I find from the more recent returns that have been submitted to me that a slight commencement has been made. The following figures will show what has been done. There have been ten applications made by agriculturists for a declaration of insolvency. In two cases the applications have been rejected; in one case a declaration of insolvency has been made, and a receiver has been appointed under section 27, but no distribution has yet been made under section 32. In the other seven cases the proceedings have not yet gone beyond the initial stage. In eight other cases the courts have themselves directed insolvency proceedings to be had of their own motion. I shall watch with interest the further stages of all these proceedings.

Working of the Act in suits beyond the Special Judge's jurisdiction.

29. Many important provisions of the Act, especially the provisions of sections 12, 13 14, 15, 19, 20, 21 and 22 are applicable in the case of many other suits than those which come within my revisional jurisdiction, and the working of these provisions in so far as suits, in which an appeal would lie, are concerned, will come under the supervision and control of the District Judges and not under mine. I mention this because an impression seems to prevail that the Special Judge is exclusively concerned with the due working of the Act.

Twelve additional Courts.

30. Hitherto there have been only 24 Subordinate Courts in the districts affected be the Act, but Government have now established 12 new courts presided over by experienced Subordinate Judges transferred from other districts. We have thus got a Civil Court for every taluka. In his speech summing up the debates in Council, Mr. Hope said—"I can see no good reason why the judicial unit of administration should be larger than the executive unit. Every taluka ought, in my opinion, to have its Subordinate Judge as well as its Mamlatdar. This aspiration has now been fulfilled almost to the letter: and not only have Government established 12 new Subordinate Courts, but they have fixed a number of places other than the head-quarter station in each taluka where the Subordinate Judges are to hold circuit courts;

the result of which is that only a few very exceptionally situated villages will be at a greater distance than 10 miles from the seat of a civil court. The Subordinate Judges, too, will now have no excuse for not trying all cases that come before them with searching care. Government are aware that a considerable amount of correspondence has within the last few months devolved upon me in connection with the location of the new courts, the determination of their jurisdiction, the selection of appropriate towns for circuit courts, the provision of suitable accommodation, and other matters of a like nature. If after some further experience it should be found that the time of the Subordinate Judges is not fully occupied, it may become expedient to adopt another suggestion that was made by Mr. Hope in the speech above referred to, namely, to invest them with magisterial powers, for which they are fully competent, and thus relieve the Mamlatdars and Awal Karkuns, who "could then better overtake the multifarious and increasing duties heaped upon them, besides taking back, at a great saving of expense, the registration work, of which they were a few years ago relieved."

Village Munsifs.

Village Munsifs.

31. Government having determined to proceed very cautiously in the matter of appointing Village Munsifs, only a few carefully selected men have been as yet nominated to the post. Thirty-two gentlemen were gazetted for certain towns and villages in the District of Satara with effect from the 1st January 1880. Thirty-seven gentlemen were similarly gazetted in the District of Sholapur with effect from the 1st February.

Numbers hitherto appointed.

32. Owing to the difficulty in finding out suitable and willing persons, some delay has occurred as regards the Districts of Ahmednagar and Poona. In the former district two gentlemen were gazetted for the city of Ahmednagar and some neighbouring villages with effect from the 1st February, and in the latter district forty gentlemen were gazetted for certain towns and villages with effect from the 1st May. Finally, a batch of thirty-four gentlemen has been lately gazetted for certain other towns and villages in the Ahmednagar District, their appointments taking effect from the 1st of the next month. I have myself seen a large nnmber of the Village Munsifs, and have personally instructed them as to the nature of their duties, supplying them with printed forms of an appropriate size for their register, and showing them how the register should be filled up. Those whom I have not been able personally to visit I have communicated with by letter, and have given them full instructions. My Assistants also have seen most of the Village Munsifs within their respective charges. Only a few, who were sick or absent from their villages or whose villages were so distant as to make a special visit not worth the time to be taken up in travelling, have been passed over without a personal interview. On the whole, I think, I may say that the selections have been carefully and judiciously made, and that the individuals appointed are fairly competent. Mr. Bhide has reported to me that two or three men are not as intelligent as he would wish, and there have been a few instances of unwillingness to perform the duties; in the former case I have deferred acting upon the representation made to me until I have an opportunity of personally seeing the gentlemen referred to; and in the latter case I have urged upon the unwilling individuals the honourable nature of the position conferred upon them, and the desirability of reconsidering their decision. On receiving replies I shall, if necessary, submit their names to Government for the cancellation of their appointments. I receive very constant communications from the Village Munsifs in which they refer to me for solution of the many doubts and difficulties which they either experience or anticipate. These I endeavour to answer as simply and at the same time as fully as I can, for the Village Munsifs are for the most part men of little education and unused to judicial work. The idea of preparing a simple manual of instructions for the guidance of Village Munsifs has recommended itself both to me and to Mr. Bhide, and, if Government approve, I propose to take steps in this direction during the rains.

Their qualifications.

33. Many of the Village Munsifs have had hitherto no suits instituted in their courts; but others seem to have had a fair share of work. Feeling somewhat doubtful as to the way in which these newly appointed functionaries might discharge their duties, I gave orders soon after taking charge of my office, that immediately after deciding a suit or disposing of an application for execution, each Village Munsif should send to me, through the Assistant in charge of the district, an extract from his register, which would enable me to judge of the work done. This plan was a good one for a commencement; but, if the work increases as I expect it will,

Work done by Village Munsifs.

it will not answer so well for a continuance; and I am now considering whether a very simple form of monthly return will not suffice to convey to me the information necessary for exercising a more effectual control than an occasional visit two or three times a year would ensure. The extracts from the registers hitherto forwarded to me enable me to supply the following particulars as to the work done by the Village Munsifs up to the date of the latest returns at the time of writing:—

VILLAGE MUNSIFS.	Number of Suits decided.	Number of Darkhasts disposed of.	VILLAGE MUNSIFS.	Number of Suits decided.	Number of Darkhasts disposed of.
Sholapur District.			*Satara District*—contd.		
Village Munsif of Sholapur	13	...			
Ditto of Barsi	1	...	Village Munsif of Tasgaon	5	2
Ditto of Pandharpur	6	2	Ditto of Wai	4	1
Ditto of Bhalavani	4	...	Ditto of Ashte	1	...
Ditto of Mohol	3	...	Ditto of Bhose	1	...
Ditto of Tembharni	5	1	Ditto of Talbid	23	...
			Ditto of Kapwad	1	...
Satara District.			*Poona District.*		
Village Munsif of Kambhargaon	10	...	Village Munsif of Dhond	4	...
Ditto of Masur	2	...			

Pending suits.

The above statement shows that a good beginning has been made; but besides the numbers actually disposed of, a large number of suits have been instituted which are still pending, the exact number of which I am not at present able to give; but I may mention, as an example, that in the short period between the 27th April and 20th May no less than 122 suits were filed in the Court of Khan Saheb Makbul Ali, Village Munsif of Ahmednagar; and I believe that a very large number of petty suits will be instituted in other courts as soon as some arrangement is made for supplying the Village Munsifs with clerical assistance. I would be glad if Government would authorize me, in consultation with the District Judges, to arrange, when necessary, for the occasional loan of the services of a Karkun from one of the regular courts to give clerical aid to any Village Munsif who has really much work to do. I would undertake that no such assistance would be given except in cases where I am satisfied that it is indispensably necessary.

Clerical assistance often necessary.

Annual conferences.

34. Mr. Bhide has made a useful suggestion that he should hold each year a conference of Village Munsifs at the head-quarter station of the Subordinate Judge of each taluka, and that all doubtful questions of practice and procedure should be discussed at such conference, whereby the possibility of many mistakes would be avoided and a certain uniformity secured. The Subordinate Judge and the Special Judge or his Assistant should be present at the conference. I would propose in the next travelling season to carry out this proposal.

Casualties.

35. Since the dates of their appointment two Village Munsifs have died; and the appointment of one gentleman has been cancelled by Government.

Contingent allowances and permanent advance.

36. Government have been pleased to sanction a contingent allowance of ₨12 a year for stationery for each Village Munsif and Conciliator, together with a permanent advance of ₨5. About 50 Village Munsifs have hitherto taken advantage of this advance; and receipts for the amounts disbursed under my signature have been sent to the Accountant General through the Deputy Collectors.

Mistakes committed by Village Munsifs.

37. Some of the Village Munsifs have, as might have been expected, committed errors in disposing of suits; but, as I have received no complaints against their decisions, and as the Act is not very clear concerning the extent of my power of correcting erroneous decisions, I have not felt justified interfering any further than to point out the errors and to warn against like errors in future. In two or three instances some Village Munsifs have entertained and disposed of suits which were outside of their jurisdiction. In one instance a claim was awarded that on its face seemed barred by the limitation law; and in another instance payment was decreed by instalments stretching over a longer period than allowed by the rules framed under section 37. I think that the preparation and distribution among the Village Munsifs of a simple

manual such as that referred to in a previous paragraph will, to a great extent, obviate the commission of such errors in future. I shall afterwards in the proper place touch upon what seem to me certain deficiencies or omissions in the Act in this respect.

Anticipated increase in number of their suits.

38. I am inclined to believe that a short time will show a very marked increase in the number of suits disposed of by these village tribunals, and that the institution will become popular and useful. The remission of court and process fees and the obvious convenience of having petty suits decided inexpensively and expeditiously on the spot must necessarily tend to this result. The only danger I apprehend is, lest the individuals appointed to the post may begin to be weary of duties which are purely honorary, yet involve a little trouble, loss of time, and responsibility. I find that much can be done to prevent any such result by the way of personal intercourse and personal influence. The infant institution must be fostered by every means in our power; and constant personal supervision seems the best of all means.

Rules under section 37 for Village Munsifs.

39. The rules that have been framed by Government under section 37 of the Act for regulating the procedure of Village Munsifs seem to me, in so far as I have yet been able to judge of them, to be suitable and to have worked easily in the case of small outlying towns and villages; but some of them are hardly adapted for use in large towns or cities such as Satara, Ahmednagar, and Sholapur. I anticipate that it will be necessary before long to arm the Village Munsifs in these, and possibly some other large towns, with legal power to compel the attendance of defendants and witnesses, and also to supply them with a small establishment. This is a subject that is engaging my attention, and I may have occasion to separately address Government concerning it at some early date.

Conciliation and Conciliators.

Conciliation.

40. It is too soon to hazard even a conjecture as to the probable operation or results of the conciliation provisions of the Act, which are contained in Chapter VI. The introduction of the conciliation system being purely experimental, it was resolved to limit it, at first, to cases in which one of the parties is an agriculturist. If the experiment is successful, there is no reason why it should not be extended so as to embrace all cases irrespectively of the occupation of the parties. The system cannot yet be said even to have commenced to work. The reason of which is that the greatest practical difficulty has been experienced in finding competent and willing persons at all equally distributed throughout the districts affected by the Act: and this difficulty led to another difficulty, namely, that of determining the best method, under the circumstances, of making the appointments. This involved the necessity of frequent reports and references and much lengthy correspondence between Government, the Collectors, the District Judges, the Mamlatdars, and the Subordinate Judges, most of which correspondence has passed through my office, and has occupied not a little of my time during the last four months. In order to give the experiment a fair trial, Government was desirous that the four districts should be broken up into local areas, that no local area should be without its Conciliator, and that the local areas should be as small in extent and as numerous as possible, so that no person requiring his services should have to travel far from his home to find a Conciliator. It has, however, been found impracticable to give full effect to the wishes of Government, owing to the immense difficulty of procuring fit persons for the office in small local areas: and it has been held advisable that intending litigants should not be restricted to one single Conciliator, resort to whom would be compulsory; but that they should have a choice between two or more. Hence the conclusion was forced upon all the local officers consulted, that the only feasible plan was to appoint a sufficient number of the best and most influential men that could be found in each taluka, and to give them concurrent jurisdiction as Conciliators over the entire taluka. In theory, no doubt, a system of village groups or conciliation circles is preferable to the above system, in which the taluka is treated as the conciliation unit; but in consequence of real and practical difficulties arising, as I have said, chiefly from the lack of comptent and willing men, Government have been pleased to approve of the adoption of what may be called the taluka system for the Districts

Method of appointment of Conciliators.

System adopted.

of Poona, Satara, and Ahmednagar, but only as a step towards the village group system which should be the one to be ultimately aimed at. With regard to the District of Sholapur, a somewhat different system has been proposed for adoption in consequence of there being a much larger number of gentlemen reported to be qualified for the duties of Conciliators

than was the case in the other districts. A certain number of gentlemen residing at the taluka towns have been recommended as Conciliators for an entire taluka, while at the same time each taluka has been divided into a number of village groups, forming conciliation circles varying in size according to the number of local Conciliators available, and for each group Conciliators varying in number from 2 to 8 have been proposed for appointments.

Dates of appointments, Poona.

41. The first batch of Taluka Conciliators appointed was that for the Poona District, which comprises 8 talukas. In all 54 gentlemen were appointed, the numbers varying from 12 for one taluka to 4 for another, and averaging 7 for each taluka. The appointments took effect only from the 1st ultimo. It is to be hoped that it will be soon found possible to raise the numbers for the under-supplied talukas to not less than 6 or 7.

Satara.

42. The next batch of appointments was that for the Satara District, comprising 11 talukas. Eighty-five gentlemen were gazetted, the numbers per taluka ranging from 12 to 6, and averaging 8. These appointments took effect only from the 15th ultimo.

Ahmednagar.

43. Next in order of appointment comes the Ahmednagar list. Fifty-eight gentlemen have just been gazetted for 10 talukas, the numbers ranging from two to one per taluka. Five talukas are insufficiently supplied with Conciliators, but every effort is being made to discover well qualified and willing men for the post. In order to give the people time to become acquainted with the new system, these appointments are not to take effect until the 1st proximo. Meantime, the nominees are being instructed in the nature of their duties, and supplied with the necessary books and rules and forms.

Sholapur.

44. I have been daily expecting the final orders of Government as to the appointments of Conciliators for the Sholapur District. They will probably appear in the next *Gazette*, and the appointments, like those for Ahmednagar, will, it is presumed, take effect from the 1st proximo. From that date it may be expected that the system of conciliation will be in full operation throughout the four Deccan districts affected by the Act. I have not thought it worthwhile delaying the submission of this report pending the receipt of Government orders as to the Sholapur Conciliators.

Work done by Conciliators.

Numbers visited.

45. In consequence of the recent dates of the appointments referred to in the preceding paragraphs, I have nothing to report as to the work done by the new Conciliators. I have only been able as yet to see personally 17 out of the entire number for Poona, 19 for Satara, and 5 for Ahmednagar; but I have communicated in writing with *each one* of the gentlemen who have been appointed, having addressed to each a lengthy letter of instructions and explanations, enclosing printed forms of the proper size of the two registers which they are required to keep and many of them have not been slow in entering into correspondence with me on the subject of their duties. I find that this correspondence with Conciliators and Village Munsifs—correspondence which in a first attempt to start a new institution can scarcely be avoided—occupies daily, and for some time to come must continue to occupy, a considerable portion of my time. This is not to be wondered at, considering the large number of new appointments that have been made. I have requested the Subordinate Judges also to advise the Conciliators on any doubtful questions under the Act that may arise at the beginning of their work, should such advice be applied for. The Mamlatdars also may often be able to render similar assistance.

Correspondence.

Previous isolated appointments.

46. Prior to the dates of the general appointments, a few isolated appointments of Conciliators were made by Government for certain towns. Thus, four Conciliators were appointed for the city of Ahmednagar, 12 for five towns in the Satara District, and 11 for six towns in the Sholapur District. These gentlemen have all been personally seen and instructed by myself and my Assistans; but owing to the fact of their local jurisdiction being limited to certain towns, in which very few agriculturists "*reside*" (within the meaning of the definition given in section 2 of the Act), they have hitherto had hardly any work to do. Only 40 applications in all had been received up to the end of April, of which 5 had been disposed of, and the others were still pending. For instance, the large town of the city of Ahmednagar, for which Conciliators were appointed, is understood to comprise only the space within the walls.

Outside the walls and adjoining them are the confines of six different villages, each with a different name and a separate Patil. Hence it happens that, though many agriculturists may live in the town of Nagar, none can be said to "reside," *i. e.*, carry on their agricultural labour within the town, and hence the Conciliators have had no chance of performing their functions. Two of the old appointments were cancelled by Government, and one Conciliator died shortly after his appointment. The other isolated appointments have now been absorbed in the general taluka appointments in accordance with a suggestion recently made by me to Government.

Qualifications.

47. Some of the Conciliators whom I have seen take a keen interest in the prospect of the work before them, and will, I doubt not, make excellent Conciliators. Others seem to be lukewarm and inclined to shirk trouble. I hope ere long to make the personal acquaintance of most, if not all, of the newly-appointed gentlemen, and when I have seen a little of their work to be in a position to form a useful estimate of the value of their services. Not a few gentlemen, when invited by the Collectors, express with alacrity their willingness to accept the office, but when they come to realize what is expected of them, begin to make excuses and to evince a disinclination for the work. I regret to say that I have already received representations from eight of those lately appointed to the post of Conciliator or Village Munsif in the Poona District, expressing their disinclination or inability, for various reasons, to undertake the duties. I have requested these individuals to reconsider their decisions, and I anticipate that some of them will do so. There can, I think, be no doubt that the conciliation system is *in se* a good and desirable thing ; but its success must depend entirely on the agency we employ and the manner in which that agency does its work. Everything reasonable should be done to assist it, and nothing to discourage it. Government have resolved that all Conciliators not entitled in their own right to higher title, should be addressed by the courtesy title of "Ajam." Government have also authorized the grant to each Conciliator of a small stationery allowance, and have directed that in few large towns the Conciliators should be allowed the occasional services of bailiff or peon to carry messages or summonses. But it appears to me that, when the work increases, this concession must be somewhat extended. Many of the Conciliators demand the services of a karkun, but this demand I have hitherto resisted chiefly on the ground that nothing can be promised until it is seen what quantity of work devolves upon them, and what effect it will have in diminishing the litigation in the regular courts.

Work only now commencing.

48. The civil courts having been closed for the usual vacation until the 1st instant, it may be said that the work of conciliation is only commencing from this month and the people generally will only now be beginning to realize that an attempt at conciliation is a necessary preliminary to litigation. Hence I expect that an immediate, but only temporary, result of the system will be a still greater decrease in the number of civil suits filed, and darkhasts presented during the next few months. No suit, and no application for execution of a decree, to which an agriculturist is a party can now be entertained by any civil court unless accompanied by a certificate from a Conciliator : and some time must necessarily elapse before applications to the new Conciliators can be disposed of. It is a matter of importance therefore that the names and addresses of the Conciliators, and the extent and nature of their jurisdiction should be notified as publicly and as widely as possible throughout the districts concerned. I have accordingly requested the Collectors to take all the action in their power to this end. The Subordinate Judges also have been asked to use their best endeavours in explaining the law, and to have the names of the Conciliators stuck up in conspicuous places in their courts.

49. I regret that the first real work done by Conciliators has to be done in the rainy season, during which it will be difficult to see many of them personally and to supervise their work on the spot. I have endeavoured, however, to make my letter of instructions as complete and full as possible : and I hope ere long to be able to report that the system is working satisfactorily.

General Remarks.

General effects.
Transition period.

50. It will be premature at present, and it must be so for some time to come, to offer an opinion as to the general effects of the new law. We are in a transition period, during which there must necessarily be a disturbance of existing relations and conditions. This is what was fully anticipated during the debates in Council attending the passing of the Bill. The Honourable Mr. Hope remarked "that a trying time of transition must intervene before all parties have understood and settled down to their new relations."

51. The only tangible result of the Act hitherto has been the large decrease in the number of suits, and the probable compromise of many disputes that have not come at all before the courts.

Decrease of litigation.

52. I see no reason to think that the withdrawal of the right of appeal in cases falling under Chapter II will be productive of any but good results, if the substituted system of revision is worked as it should be worked, and as I hope it will be worked.

Withdrawal of right of appeal.

53. It is in Chapter III of the Act that the most startling changes have been introduced. The provisions of sections 12 and 13 for "going behind the bond" and for taking an account ought in time, I believe, to work beneficially, for they give the Judges an equitable power of controlling contracts—a power which, if exercised consistently and reasonably, cannot do harm and may do much good.

Provisions of Chapter III.

It is true it often happens that in many cases these sections are difficult or even impossible of application, and they are naturally most strongly objected to by the Sowkars. I have seen and conversed with many Sowkars in the course of my tour: and have taken every opportunity of assuring them that this litigation is not in any sense aimed against their legitimate trade. But the smaller Sowkars point out to me that they carry on their business on borrowed capital for which they have to pay high interest every year, and that they must live on the annual interest they manage to obtain from their own customers, and that the system of taking an account on a novel basis and of going into the back history of transactions supposed to have been long since closed, must have the result of so cutting down their claims that their business must inevitably be carried on at a loss: while they can claim no similar protection against their own creditors—the larger Sowkars. They also complain of the provisions of sections 19, 21, and 22 of Chapter III. There can be no doubt that these and other provisions of the Act will have the immediate effect of diminishing the ryot's credit; but this may be only temporary. Whether the relations between the ryot and the money-lender will hereafter re-adjust themselves on a more satisfactory basis is a point which only the future will make clear. Last season we had a fair average crop throughout the four affected districts, and hence this year no remarkable strain has made itself felt. Possibly the strain may come next year when money is wanted for the revenue instalments: but even then it will be too soon to arrive at a correct judgment on general question. In the speech, from which I have already quoted, it was foreseen "that difficulties between debtor and creditor will arise in many individual cases, and even in villages and talukas generally, and that their effects may appear in the recovery of the land revenue." No steps, that I am aware of, have yet been taken with a view that the revenue demand should be "so timed and adjusted as not to drive the ryot to the Sowkar, even temporarily, in order to meet it. Till something is done in this direction, the mutual inter-dependence of the Sowkar and the ryot in the four Deccan districts is a fact that has to be faced and acknowledged, and, pending the acquisition of further experience, we can only hope that the "sound credit" of the ryot will not be permanently injured by legislation, which, though circumstances seemed imperiously to demand it, is yet admitted to be experimental, and by many condemned as retrograde.

Effect on credit.

Revenue system.

54. I have received a few petitions, more or less numerously signed, complaining of the general effects of the Act, the stagnation of business and the injury to agricultural credit. One somewhat remarkable petition, signed by all the leading bankers, traders and general inhabitants of Ahmednagar, was presented to me, a translation of which I take the liberty of forwarding for the information and consideration of Government. It is marked Appendix G.*

Complaints against the Act.

* Printed on page 223.

55. While on the subject of petitions, I may remark that at most places which I visited I was besieged by verbal applications from indebted ryots, who imagined that I had it in my power to free them from their debts and give them back their lands. I still receive by post many similar petitions. I make a point of explaining fully to such persons the various remedies open to them by the Act, and of showing them what steps they should take to enforce the remedies. I believe that in every village in the country much land is held by creditors in mortgage, which would revert, at once unencumbered to the original proprietors if an account were taken in the manner laid down in sections 13 and 14 of the Act. The remedy in such

Applications by indebted ryots.

cases is a suit for an account under section 16 or a redemption suit under section 3, clause (z). The complaint, too, is pretty general that the creditor mortgagees refuse to disclose or render any accounts; but now by section 65 they may be compelled under a penalty to do so at the time of the Divali Festival. I have lost no opportunity of making these provisions and the other contents of the Act as widely known as possible; and I feel confident that before long there will be a very considerable augmentation in the number of suits for accounts and for redemption.

Exemption of land from attachment.

Effect on dealings with land.

56. As land, unless specifically pledged, is exempted by section 22 from attachment and sale, it was expected that there would be a decided increase in mortgage transactions; but, on the other hand, owing to the peculiar provisions of section 13 regarding the mode of taking an account, it is generally said that creditors evince a disinclination to enter into such transactions, and hence the fear has been expressed, and it is said to be generally felt, that in most cases agriculturists when seeking an advance will be constrained by their creditors to execute an out-and-out conveyance of their land, such conveyances being, it may be, accompanied by a collateral oral agreement for reconveyance on discharge of the debt. Unfortunately, I have no statistical information which would enable me to judge with any degree of accuracy as to the truth of these fears and expectations. I have, however, availed myself of every opportunity that presented itself of conversing with the Sub-Registrars of the talukas which I visited: and to the best of my information and belief there has been a universal decrease in the numbers of documents of all kinds presented for registration during the period commencing from the 1st November last, as compared with former years. Some Sub-Registrars inform me that there is a slight, but very slight, comparative preponderance of instruments of sale over instruments of mortgage, while others have told me that they have perceived nothing abnormal in the relative numbers of such instruments. I would be glad if my office were provided with the registration statistics of former years, and if, in future, the Registrars or Sub-Registrars could furnish me with regular statements, that would enable me to form some judgment on the important point now discussed. At any rate, I think I may safely say that hitherto there has been no startling change, though the rumours of such a change and the general belief in it seem to warrant my alluding to the subject.

Village registration.

57. The system of village registration having come only recently into force, I have nothing to remark on the subject. I only regret that the Registration Circles were not larger and were not entrusted to picked men. From all I hear, the agency employed does not command the confidence that would seem desirable.

Effect of insolvency provisions doubtful.

58. It is, as I have already pointed out, extremely difficult to say whether the insolvency provisions of Chapter IV will work beneficially or whether they will remain a dead letter. It depends chiefly on the people themselves.

Village Munsifs probably successful.

59. The institution of Village Munsifs will, I believe, be a success, and will become capable of much development in the process of time.

Conciliation.

60. I must confess to some misgivings as to the ultimate success of the conciliation provision; but I trust no efforts will be spared to foster and encourage the experiment, so that it may have a really fair trial.

Exclusion of vakils.

61. It only occurs to me to touch on one other subject in connection with the general policy of the new Act, and that it is the exclusion of Vakils in certain cases. Strange to say, I have heard no one speak in favour of this exclusion. On the contrary, I have been flooded with complaints and remonstrances on this subject. The compulsory attendance of the plaintiff and the defendant and the bringing them face to face at some one stage of the proceedings is undoubtedly a good thing; but in the course of a suit there may be dozens of occasions on which, under the present system, the attendance of the parties is obligatory, and this is felt as an unnecessary hardship and burden by all parties, involving as it does not only waste of time, but the waste of more money than the retention of a Vakil would occasion. It rarely happens, even in the simplest cases, that the personal attendance of the plaintiff is required less than six times in the

progress of a suit, and on most of these occasions it is only to perform some purely formal or ministerial duty, such as the payment of batta; or of process-fee on the presentation of a darkhâst which could be done more cheaply and conveniently by an agent on the spot. I find much warm feeling —I might say discontent—on this point, and I think the grievance is a real one, but I hesitate to recommend any change in the law until we have had a little longer experience and have seen whether the increase in the number of courts and the adoption of the circuit system may help to reconcile people to the change. In but few cases has any advantage been taken of the provision that allows the employment of a relation, servant, or dependent in lieu of a pleader; and I do not think that any large proportion of litigants will ever be in a position to take advantage of them. I am frequently told that the people would have no objection if the pleaders' costs were excluded from calculation in the decree; and I think it would have been sufficient if this change only had been introduced in the first instance. Pleaders can be consulted at their homes, and even on the threshold of the court; and but little advantage can be gained by excluding them from appearing in the court itself. Still it is possible that the public may become reconciled and adapt itself to the change, and hence I would recommend that we should wait and watch a little longer.

Extension of limitation.

62. The extension of the period of limitation is regarded with general favour, and I think it would be productive of good results, as it would certainly be popular, if the benefit were extended to all parties and not restricted to agriculturists only.

Doubts and difficulties in connection with the Act.

63. I now approach a part of my subject which I think it necessary to dwell on at some little length. In the practical working of the Act many doubts and difficulties have been experienced, and some seeming defects and omissions have come to light. In the following remarks I propose to embody mos tof the verbal and other criticisms which have been addressed to me by the Subordinate Judges, Pleaders, Sub-Registrars, and others during the course of my tour, and a few suggestions that have been made or have occurred to me for its amendment. It will be for Government to consider, after consultation, if necessary, with its legal advisers whether any of the objections taken or suggestions made are of such a nature as to render an early amendment of the Act necessary or expedient. Some few of the doubts have reference to the language of the notifications of the Government of India and the High Court remitting and reducing court-fees and process-fees in certain cases. I propose to take up in their order the different sections that have been criticised and to comment on them.

Definition of "agriculturist", section 2.

64. The minds of all persons who have been concerned in the working of the Act have been greatly exercised on account of the definition of the term "agriculturist," which in section 2 is defined as meaning "a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts:" and the following questions are asked:—

(1) Is an Inamdar, not himself the absolute proprietor, but merely the assignee of the Government rent or land revenue of certain lands, who does not himself cultivate but lives on such Government rent or land revenue, an "agriculturist?"—I think not.

(2) Is an Inamdar, the proprietor of lands, who does not himself cultivate either in person or by his servants, but lets all or most of his lands to tenants, and live wholly or principally on the rent so received, an "agriculturist," and entitled as such to all the protective benefits of the Act?—I think, though doubtingly, that he is, for his profits are derived from agriculture.

(3) Is an ordinary proprietor of land, who does not cultivate himself either in person or by his servants, but lets all his lands to tenants and supports himself on the rents so received, an "agriculturist?"—I think he is, for the foregoing reason.

((4) Is a professional man or even a Marwadi Sowkar, who has large holdings of land in his name, from which he derives a larger income than from his other business but who never cultivates either by himself or his servants, but lets all his lands to tenants and derives most of his income from the rent paid by them, an "agriculturist?"—I think he is, for the case cannot, in my opinion, be distinguished by principle from the preceding.

(5) Are wealthy landholders or zemindars, whose income is derived from the rent of their lands, "agriculturists?"—I think so, for this is only a general way of putting the previous cases.

(6) Is a proprietor, who never cultivates himself, but employs servants or day-labourers to till his fields, an "agriculturist?"—I think so.

(7) Are the farm servants, agricultural labourers or day-labourers of such a proprietor "agriculturists?"—I think so, for Mr. Hope in one of his speeches said they are, on the authority of the learned Law Member of Council. But it is doubtful, as such persons have no lands of their own, and the policy of the Act aims at the protection of the peasant proprietary: and such labourers, as a rule, have no lands of their own to be protected. Again, most farm labourers are employed for only a short period of the year on field work: most of the year they are employed on any other labour that comes to their hand, or beg, or starve. It is difficult to decide on the words "wholly or principally."

(8) Is a man, who has no land of his own, but cultivates the land of others on lease or as a tenant-at-will, an "agriculturist?—I think so, *á fortiori* from the preceding.

(9) Is an owner of land who formerly cultivated himself, but who long since mortgaged his land and ceased to cultivate and has since maintained himself by other pursuits, an "agriculturist?"—He ought certainly to be held one, but he might not come within the definition. If he supports himself, say by the hire of his cart, a court might hold that he was not an agriculturist, and he might be deprived of the benefits contemplated in the Act of suing for an account, etc., etc.

65. The difficulty I have been trying to illustrate is a real practical one, and is encountered at every step. People who never called themselves agriculturists before are now beginning to call themselves so; and I am frequently appealed to for advice. It is true that section 73 of the Act says that "the decision of any court of first instance that any person is or is not an agriculturist, shall for the purposes of this Act be final; and if it were all left to the courts to decide, a course of decisions might gradually be obtained so as to form a body of precedents: but the question is one that does not concern the civil courts alone. The Conciliators have to decide who is and who is not an agriculturist; and many of them, being puzzled have appealed to me. The new Village Registrars, an ignorant class of men, have also to decide the point in connection with registration matters under Chapter VIII and section 71 of the Act. The Collectors and Mamlatdars have often to consider the point in connection with execution proceedings pending before them. But above all the litigating public have to decide for themselves, for, with reference to the very important provisions of section 72 of the Act, upon the question whether a man is or is not agriculturist, depends whether the period of limitation is to be reckoned at 12 and 6 or 6 and 3 years respectively. In this same connection other difficulties present themselves: at the expiration of three years from the accrual of the cause of action a man may be an agriculturist; but he may have ceased to have been such for 2½ years at the end of the 6-year period. So, conversely, a man may not be an agriculturist at the end of the 3-year period and may become such before the end of the 6-year period.

66. I would earnestly recommend an improved definition of the term, in which the element of time should not be lost sight of.

Section 3, clauses (*w*) and (*x*).

67. In the last paragraph of clause (*w*) of section 3 the following words occur: "suits on a written or unwritten engagement for the payment of money not hereinbefore provided for," and in the first sentence of clause (*x*) of the same section occur the following words: "suits for the recovery of money due on contracts other than the above." I am unable to perceive any distinction between these two modes of expression. In one the word "contract" and in the other the word "engagement" is used; but to my mind they mean the same thing, and many shrewd Subordinate Judges have confessed themselves puzzled by the apparently intended distinction.

Section 3, clause (*x*), "rent."

68. Some Subordinate Judges have queried whether the word "rent" in section 3, clause (*x*), was intended to include the rent of land which is expressly excluded in section 6 of Act XI of 1865 from the cognizance of Small Cause Courts. In the official translation of the Act the word "rent" is rendered by the Marathi word "khand," which is applied exclusively to the rent of land, and never, as far as I know, to the rent of buildings.

Section 3, clause (*x*), "damages."

69. The question has been asked whether the word "damages" as used in section 3, clause (*x*), would include a suit for mesne profits, or for damages to immovable property.

Section 3, clause (*y*).

70. It has also been queried whether a suit by a mortgagee against a mortgagor for possession of mortgaged land would fall under section 3, clause (*y*), if the mortgagee were so to disguise the nature of his claim as to sue in the character of a landlord on a rent-note which he alleges the mortgagor has passed to him. Such suits do not appear to fall under the latter, though they do under the spirit of the Act, for it often happens in such cases that the whole history of the mortgage transaction may fairly be called in question and opened up from the beginning under the provisions of section 12.

Section 4.

71. I and others are at a loss to know why section 4 was introduced into the Act, for, to the best of my knowledge, a Subordinate Judge of the First Class and a Subordinate Judge of the Second Class never have ordinary jurisdiction in the same local area, *i.e.*, never have concurrent jurisdiction. The only case that comes at all near it, and which perhaps should have been expressly provided for in the Act is,—when a Subordinate Judge of the Second Class is deputed under the authority of section 23 of the Bombay Civil Courts Act to assist a Subordinate Judge of the First Class in the disposal of the suits on the latter's file. Even in this case suits must be *instituted* in the Court of the First Class Subordinate Judge, and are merely referred to the Second Class Subordinate Judge for disposal. The literal requirements of section 4 would be complied with if suits of the nature referred to, exceeding R100 and not exceeding R500 in value, are *instituted* in the Court of the First Class Subordinate Judge. There is nothing in the section to prevent such suits being referred to the Joint Second Class Subordinate Judge for trial, though the object of the section would thereby be defeated. Instead of the word "instituted" the word "heard" should have been used. As a matter of fact, I discovered that several suits of values between the prescribed amounts instituted in the Court of the First Class Subordinate Judge at Poona had been referred for trial to the Second Class Subordinate Judge, who was temporarily assisting the First Class Subordinate Judge, and who could not, without the consent of both parties, exercise the summary jurisdiction contemplated in Chapter II. I issued stringent orders that this should not be done again, but that the First Class Subordinate Judge should invariably retain such suits for disposal by himself. To my mind section 4, as it stands, is altogether superfluous.

Section 7. Compulsory attendance of defendant.

72. Section 7 contemplates the personal attendance of the defendant in every suit, and in the debates in Council it was taken for granted that, if necessary, such attendance would be procured by compulsory process. The Subordinate Judges have been very reluctant to proceed to this length, and they point out certain difficulties in the way. I have explained that if it once becomes generally known that defendants must, under the penalty of arrest, obey the summons of the Court, the necessity of actually issuing warrants will in future hardly ever arise, for the defendants will, as a rule, always take care to come of their own accord. The plaintiffs, however, sometimes decline to pay the process-fee for summoning the defendants and the batta for their subsistence: nor is it easy to see how it would be justifiable to compel them to defray such charges; yet, having regard to sections 93, 171, and 174 of the Civil Procedure Code, it is very doubtful whether it would be lawful to arrest a defendant for not obeying a summons, unless at the time of service subsistence money is tendered to him. I would like to be favoured with instructions on this point, so as to be able to advise the Subordinate Judges all of whom have consulted me thereon.

Section 10. No appeal to lie; but query as to execution proceedings.

73. It is provided in section 10 that no appeal shall lie for any decree or order passed in any *suit* to which Chapter II applies: and in Chapter VII it is provided that the Special Judge shall inspect, supervise, and control *the proceedings* of Subordinate Judges under Chapter II. Now Chapter II deals entirely with *suits*: it is totally silent as to execution proceedings. The very important question therefore arises whether the Special Judge has any authority whatever over the Subordinate Judges in executing the decrees passed under Chapter II. Strictly speaking, he would appear to have none, for the word "suit" does not ordinarily include "execution proceedings": yet it would be a striking anomaly that the Special Judge should be able to control the proceedings of the Subordinate Judges throughout the various stages of a suit up to and including the decree, and that he should be powerless to control them or correct their mistakes throughout the various stages of execution proceedings after decree: and the anomaly is the most more striking when it is remembered that some of the most important provisions of the Act relate to proceedings in execution. For the present I have assumed that I have jurisdiction to inspect, supervise, and control the proceedings of Subordinate Judges in execution of decrees passed under Chapter II, and I have prescribed a form of monthly return

for such proceedings (*vide* paragraph 10 and Appendix F). If I have no such power, then an appeal would lie in certain cases from orders passed in execution by the Subordinate Judges to the District Judge, while from orders in the suit itself and from decrees no appeal would lie. I hardly think this could have been intended, and as the point is a doubtful one, and one moreover, which is frequently arising in practice, I am extremely anxious that the doubt should be soon set at rest.

Similar question as to Court Fee Notification.

74. A very similar question arises with respect to the interpretation of the Notifications of the Government of India reducing the court-fees in cases falling under Chapter II. The Notification says that the Governor General has "reduced to one-half, " * * " the fees payable in respect of the documents specified in the first or second schedule" of the Court Fees Act * * " in *the case of suits*" to which Chapter II applies. The question is—Does this reduction extend to darkhàst and other applications presented in the course of proceedings in execution of decree passed under Chapter II ?—Most of the Subordinate Judges think not. But I think, on grounds of consistency and expediency, that it should be held so to extend, because an application in execution is one of the documents specified in the schedules, and it is also presented "*in the case of a suit.*" I should be glad if Government will be pleased to favour me with a decisive interpretation on this point. Meantime, the practice varies.

75. This leads me to refer to another doubtful point in connection with the same Notification. The Notification affects suits "*to which Chapter II applies.*" Now Chapter II applies to suits of certain descriptions up to ₨100 in value if heard by a Second Class Subordinate Judge, and up to ₨500 in value if heard by a First Class Subordinate Judge. This leads to the anomaly that suitors living within the jurisdiction of a First Class Subordinate Judge are better off than those living within the jurisdiction of a Second Class Subordinate Judge—in that the former can litigate twice as cheaply as the latter. But, if both parties consent, Chapter II will apply to suits up to ₨500 in value, even if such suits are heard by a Second Class Subordinate Judge, and therefore the Notification will also in such cases apply. The difficutly, however, is—in what way to apply it? The heaviest court-fee in connection with a suit is the institution fee, calculated on a percentage of the value of the subject-matter. Now the plaintiff may be quite willing—and in most cases will be so—that the provisions of Chapter II and the advantage of the Notification should apply to his suit; but, before either can apply, the consent of the defendant must also be obtained, and it will rarely happen that such consent can be obtained until *after* the summons is served upon him, and he appears in court. Both parties will thus lose the chief benefit of the Notification, because, till consent is given, the plaint, strictly speaking, must be fully stamped. Now, what is to be done in such cases? There would seem to be three courses open. First, the plaint might be admitted on half stamp in token that the plaintiff consents and in anticipation of the defendant's consent: and in the event of the defendant not consenting, the plaintiff might be directed to make good the deficiency. I prefer this course as being the simplest and most expedient; but I doubt its legality, and there is this objection,—that the defendant might not appear, and the plaintiff might make default, in which case the suit would not fall under Chapter II at all. Second, the plaintiff might, in the first instance, pay the full fee, and then, in the event of the defendant signifying his consent, a refund might be made under a certificate of the court; but it seems to me that it would require a special rule or even a special Act to legalize this course. Third, the full institution fee should invariably be demanded, and, in the event of the defendant giving consent, the benefit of the Notification would extend merely to all subsequent stages of the suit, and the institution fee would remain unaffected. This course would be unsatisfactory, and would deprive the litigants of the only substantial portion of the boon. I would submit that early orders are needed on this point. As yet very few cases have happened in which consent has been given; but I anticipate that before long many cases will arise, in which parties will prefer the saving of expense to the retention of the right of appeal.

Section 12. Its retro-activity.

76. Section 12 contains the important provisions directing that in certain suits the past history of transactions with agriculturist debtors is to be investigated. Several nice questions have arisen in connection with this section. One of these has been settled by a recent judgment of the High Court, namely, whether the provisions of the section apply to suits which were pending on the 1st November 1879, the day when the Act was passed. This has been ruled in the negative. I beg to enclose, for the information of Government, a copy of the judgment*

* Printed on page 227.

(Appendix H). The judgment is based, I think, on somewhat techincal grounds and, I doubt if it is in accordance with what the intention of the Legislature was. It is, I think, an arguable point whether the court mentioned in section 12 necessarily means the Court mentioned in section 11.

Section 12. Meaning of words "not being merely a surety."

77. Section 12 applies to certain suits, "in which the defendant or any one of the defendants, not being merely a surety of the principal debtor, is an agricuturist." Considerable misapprehension exists as to the precise meaning and force of the words "not being merely a surety of the principal debtor," and the question is asked why an agriculturist surety should have harder measure dealt out to him, and be placed in a worse position and subject to a stricter procedure than an agriculturist principal. Supposing that A, an agriculturist principal debtor, were sued alone on a bond for R100, section 12 would apply to such a case, and if the past history of the debt were investigated from its commencement, and an account taken as directed in section 13, it might easily happen that the claim for R100 would be summarily cut down to R50; but supposing A cannot be found, or for some reason or other is not proceeded against, and the suit is brought against his surety B alone, who is also an agriculturist,—in this case the defendant is an agriculturist, but he is "merely a surety of the principal debtor," and, therefore, according to the accepted reading of the words, section 12 would not apply, and the back history of the transaction need not be opened up, so that the result would probably be that a decree for the full sum of R100 would be passed against B, whereas, if his principal had been sued, the claim would have been reduced to R50. Then, again the surety B might subsequently sue his principal A and recover the full amount from him so that A would thus lose the benefits contemplated by the section, or perhaps in the suit against the surety B the latter might plead that his liability *qua* surety was only co-extensive with that of his principal, and that, if an account were taken of what his principal really owed, it would be found to be only R50, and a decree for so much only might be passed against the surety, notwithstanding the non-applicability of section 12 to his case. I cannot think that the words really bear the meaning which I find so many of the Subordinate Judges attach to them, and yet I must admit that I fail to perceive their exact import. It seems to me that the words are unnecessary in this section.

Section 12. Fresh bond for amount of old decree.

78. It has been doubted whether an inquiry into the back history of a debt is necessary under section 12, when the past transactions have been closed by a decree of a competent court and a fresh bond passed for the amount of the decree. In other words, should the court go behind a former decree and re-open the transactions thereby closed? I think not: but if a fresh bond is executed after the passing of the Civil Procedure Code Amendment Act, the court must see that the new bond does not contravene the provisions of section 257A.

Section 12. Suits on one out of several bonds.

79. It is sometimes difficult to go into the back history of a debt and to take an account from the beginning, for it often happens that, at some previous general settlement of an account, the transaction may have been split up into several bonds for different amounts and running, perhaps, for different times, and the suit may be brought only on one bond, while as regards the remaining bonds a cause of action may or may not have yet accrued. What is to be done in such a case? Should the amount due on all the bonds be ascertained, and would it be lawful to award on the bond sued on a sum proportionate to the amount that would have been decreed under section 12 if a suit had been brought on all the bonds? This is the course which has been followed with my approval by several of the Subordinate Judges; but it would be well if such cases as this had been foreseen and provided for in the Act itself.

Section 12. Impossibility of taking an account in some cases.

80. Again, in many cases, it is found utterly impossible to take an account in the manner laid down in section 13, or even to ascertain any portion of the back history of the transactions preceding the bond, for not unfrequently neither plaintiff nor defendant have any personal knowledge of those transactions. In such cases the Subordinate Judge must go on mere probabilities,—which is often little better than guess work,—or he must throw out plaintiff's claim on the ground that plaintiff has failed to produce the necessary proof, even though the court may feel no reasonable doubt that originally there was some consideration. The latter course would often be unjust, and I generally advise the Subordinate Judges to decide to the best of their lights on the probabilities of the case, but I regret that the provisions in the original Bombay draft of the Bill, which, vague though they were, were expressly framed to meet such cases, were not adopted. They laid down certain considerations to guide the discretions of the courts, which I think would often

have been useful. It is to be hoped, however, that the stringent requirements of section 12 will have the effect of inducing many persons to keep accounts who have never kept them before.

Section 14. Reduction of rate of interest.

81. Section 14 allows the court to reduce the rate of interest to such rate as it deems reasonable, in cases only where it enquires into the back history and takes an account; but it may often happen that in consequence of the transaction in suit being the very first one between the parties and in consequence of the defendant admitting the claim, the necessity of enquiring into the past history and of taking an account does not arise, yet the court may consider that the interest claimed is highly unreasonable—in such cases apparently the court would not be able to reduce the rate of interest, though the possession of such power would be undoubtedly beneficial, and would seem to be a necessary corollary of its possession in the former class of cases, there being no apparent difference in principle between the two cases, *quoad* reduction of interest. Many persons who are totally opposed to the main provisions of the Act would have no objection to the courts being armed with a decretionary power of reducing exorbitant interest. I think the Act might safely go farther than it does in this direction and the powers of revision and control vested in the Special Judge would operate as a safeguard.

Section 16. Suit for an account.

82. Section 16 allows an agriculturist to sue for an account in certain classes of cases, which are the same as those referred to in section 3, clause (*w*). Two questions have presented themselves in connection with this section. The first is—on what stamp (court-fee) should a suit for an account be brought? Generally speaking, the ryots do not know the amount of their debts; and a suit for an account is not a suit in which they can recover anything. Some Subordinate Judges think that such a suit should be brought on a stamp of R10 (in case of agriculturists reduced to R5), because it is not, they say, possible to estimate at a money value the subject-matter in dispute (*vide* No. 17 VI of Schedule II of the Court Fees Act). Now a sum like R10 or even R5 is simply prohibitive to the vast majority of indebted agriculturists. In section 7, clause IV (*f*), of the Court Fees Act, I find that in suits "*for accounts*" the fee is to be computed according to the amount at which the relief sought is valued in the plaint. Now the difficulty is—how is an indebted ryot, who has no idea of the amount of his debt, to set a money value on the relief sought. The only relief that he can get in a suit for an account is a declaration of the amount of his indebtedness, which may be a sorry consolation to him. I therefore advise the ryots who appeal to me that they may, if they think proper to do so, value the relief sought at a mere nominal sum (*e.g.*, any sum between 1 pie and 5 rupees), in which case the court-fee would be the minimum fixed by law, namely, 6 annas, or 3 annas if the Notification applies. Now, I am anxious to know whether I am right in so doing. The second question is whether an agriculturist, whose lands are mortgaged with possession to his creditor, and who might therefore bring redemption suit under section 3, clause (*z*), can bring a suit under section 16 for a simple account of money lent to him. I think he may, and it would often be a far less expensive and equally effectual remedy, for the court-fee on a regular redemption suit would often be prohibitive and prevent indigent mortgagors from suing; but if the amount due on the mortgage could first be ascertained by an inexpensive suit, and if the debtor could afford to pay such amount, he would then be in a position to enforce the re-delivery of his land by a fresh suit if necessary.

Section 19.

83. Section 19 enacts in its first paragraph that if the sum recoverable from an agriculturist under a decree is less than R50, and if the court is satisfied that there is no other claim against him, the court may grant him a discharge in whole or part; and in its second paragraph it enacts that if the sum payable under the decree amounts to R50 or upwards, or when there are other debts which with such sum amount to R50 or upwards, the Court may direct insolvency proceedings to be taken. But between the two cases provided for in the two paragraphs there is an intermediate case—clearly a *casus omisus*—which is not provided for at all, namely, if the sum recoverable under the decree be less than R50, and at the same time there be other claims which, together with the sum payable under the decree, amount to a sum less than R50, *e.g.*, suppose a decree for R20 and another claim or debt for R20, neither paragraph of the section provides for such a case. Again, a doubt has been expressed whether the word "recoverable" under a decree means that the decree must be for a sum less than R50 or will it suffice that the amount at the time due or recoverable under it should be less than R50, notwithstanding the total amount of the decree. I think the word "recoverable" is wrongly used. The decree might be for R490, payable in ten yearly instalments, and the amount recoverable

at one time would then be less than R50. It seems to me that the intention was that the entire judgment-debt should be under R50; but if so, it might have been expressed more clearly.

84. Section 20 allows the Courts to grant instalments at any stage of execution proceedings, and two questions have been raised regarding this. One of them is whether the courts can order instalments in payment of a decree founded on a mortgage transaction. There is an old ruling of the High Court that in such cases instalments should not be allowed; but I think the broad language of the section supersedes the ruling, and that instalments may be allowed in *all* cases if the court thinks fit. The other question is whether, supposing an appellate court had declined to allow instalments, a lower court executing the decree could in the course of execution direct payment by instalments, and thus in effect vary the decree of the appellate court. I think the lower court could do so, but as a matter of fact would never do so in such a case except for very special reasons and under changed conditions.

Section 20. Instalments.

85. Sections 21 and 22 are the important sections which grant immunity from arrest to the person, and exemption from attachment and sale to the property of an agriculturist: and the chief question which has arisen in regard to them is—to what extent, if any, are their provisions retro-active. I think it pretty plain that the real intention of the Legislature was that from the passing of the Act arrest and attachment were to cease; but it is doubtful whether, according to the recognized canons of interpretation, such a construction will be judicially placed upon them. The question arises most frequently in regard to the attachment and sale of land in execution of decrees passed prior to the 1st November 1879, and presents itself in different phases and stages, such as the following: (1) A decree is passed before the 1st November 1879, but the application for attachment is not made till after the said date. (2) A decree is passed and application for attachment is made before the 1st November 1879, but the order on the said application has to be made after the said date. (3) A decree is passed, the darkhast is presented and the order for attachment is made before the 1st November 1879, but the order has to be executed after the said date. (4) The attachment has been made before the said date, but the sale has to be held after it. (5) The sale has been made but not confirmed before the said date: it awaits confirmation after it. What should be done in each of these cases? I understand that the whole question is now before the High Court on a reference from the District Judge of Ahmednagar, and I am anxiously awaiting an authoritative judicial decision. Meantime there has been a conflict of opinion, and able arguments have been put forward on both sides. In some cases the conflict is between Subordinate Judges who have ordered sales of land, and Collectors who decline to execute them. It is, I think, to be regretted that the Legislature did not put the subject beyond the possibility of doubt by clear and precise words.

Sections 21 and 22.

86. The second paragraph of section 22 authorizes the court to direct the Collector to manage the judgment-debtor's surplus immoveable property for the benefit of the creditor: the court may give such direction either "when passing a decree or at any subsequent time." Now the words "when passing a decree" can only refer to, or rather can only take effect in the case of, future decrees, and hence it has been inferred by one Subordinate Judge that these words followed by the words "or at any subsequent time," must be taken to indicate that the whole paragraph was meant to apply only prospectively. There is a certain awkwardness in the drafting, but I do not think that the intention was such as is supposed. If the first paragraph of the section applies in the case of decrees passed before the 1st November 1879, it must follow that the second paragraph similarly applies. With regard to the wording of another part of the second paragraph, I would point out that the Collector's management is to extend only to the superfluous portion of the judgment-debtor's property—to such portion of the property as, in the Collector's opinion, is not required for the support of the judgment-debtor and his family. The Collector apparently is to decide as to the extent and quantity of this portion; but it is not clearly stated so in words. It is also apparently intended that the rest of the property should remain in the judgment-debtor's own possession, but there is no provision protecting the crop on such remaining portion from attachment, and where will be the advantage of leaving a necessary minimum of land in the judgment-debtor's possession, if the crop produced on that minimum by the debtor's toil may be carried off by a creditor as soon as garnered. It would be better to allow the Collector to manage the whole, and to make provision therefrom for the debtor's maintenance.

Section 22, paragraph 2.

Section 22. Standing crops.

87. This brings me to another difficulty with respect to section 22. Standing crops being "immoveable property," will be protected from attachment and sale in execution; but the moment the crops are severed from the ground, they may be pounced upon by the creditor. One of two consequences will follow. Either the debtor's annual store of food-grain will be lost to him, in spite of the nominal protection to his land, or he will make a point of selling his standing crop, *as it stands*, and so defeat his creditors; I am respectfully of opinion that the provisions of section 22 require to be re-considered.

Insolvency Chapter.

88. Chapter IV should, I think, contain some directions for dealing with cases in which the court itself has directed insolvency proceedings under the last paragraph of section 19. Some of the Subordinate Judges declare themselves unable to reconcile the provisions of that paragraph with the requirements of section 26, which relate to declarations of insolvency. Should the Act come up for amendment, I would beg to direct attention to this point.

Section 29.

89. Section 29 relates to the management of the insolvents' immoveable property by the Collector: and some of the difficulties to which I referred under section 22 present themselves here again. The section, too, is silent as to the person to whom the Collector is to pay over the profits of the property under his management. Apparently he should pay them over to the receiver, in the same way as he is directed in the last paragraph of section 30 to pay over the balance of the sale-proceeds to the receiver.

Village Munsifs.

90. Chapter V of the Act relates to Village Munsifs. Section 35 enacts that every decree or order of a Village Munsif shall be final, but that the Special Judge may, on petition within 30 days, set aside a decree or order on the ground of corruption, gross partiality or misconduct. Section 50 of Chapter VII again provides that the Special Judge shall inspect, supervise, and control the proceedings of Village Munsifs. Now, the question arises—in what way are obvious mistakes of Village Munsifs to be corrected—supposing, for instance, a Village Munsif tries and disposes of a suit beyond his jurisdiction. The Special Judge apparently can only set aside the decree on the ground of corruption, gross partiality or misconduct; but he ought obviously to have the same power of revising the decrees of Village Munsifs as he has in the case of the decrees of the Subordinate Judges under Chapter II, and it would be a good thing if such power were expressly given to him in the Act. At present I feel at a loss how to deal with several decisions of Village Munsifs which have been referred to me for orders by my assistants.

Conciliation.

91. Chapter VI, sections 38 to 49, deals with the subject of conciliation. By section 38 Conciliators are to exercise their functions "in respect of matters *affecting agriculturists*," but whether the matters referred to must affect agriculturists, *as such, i.e., exclusively in their character as agriculturists*, the section does not specify—apparently, however, not; for the following section (39) speaks of "*any* matter within the cognizance of a civil court between two or more parties, one of whom is an agriculturist.

92. In the course of the proceedings before a Conciliator, the chapter contemplates that one of three things will always happen. Either the parties will come to an agreement finally disposing of the matter in dispute, or to an agreement for referring it to arbitration (in both of which cases the agreement is to be reduced to writing and sent to the civil court), or (thirdly) the attempt at conciliation will fail, in which case a certificate is to be granted that will enable either of the parties to bring a civil suit. But it will often happen that some agreement may be come to which need not necessitate the prepartion of a formal writing or the forwarding of the same to a civil court. For example, a misunderstanding may be cleared up, and the intention of litigating may be abandoned either temporarily or definitely; a sum of money may be paid down on the spot or some article may be delivered, and both the parties may go away satisfied; and many other circumstances may be imagined and will often happen in practice, under which no writing to take effect as a decree will be needed, and the future interposition of the court neither wished for nor necessary. The chapter does not at all contemplate or provide for such cases.

Sections 44 and 45.

93. Section 44 requires that if the agreement is one finally disposing of the matter in dispute, it shall be forwarded to "*the court of the* SUBORDINATE JUDGE *of lowest grade having jurisdiction* IN THE PLACE;" but section 45 requires that, when the agreement is one for referring the matter

to arbitration, it shall be forwarded "*to the* COURT *having jurisdiction* IN THE MATTER." Here, then, seems to be a discrepancy and an error of drafting, for "the court having jurisdiction in the matter" might be the court of a Village Munsif, which would have no power to deal with a reference to arbitration under the Procedure Code. I take it for granted that the expression "Civil Court" as used in this chapter, must necessarily include the court of a Village Munsif; but I think there should be an express explanation that the words *do not* include such court. In section 47 it is enacted that "*no suit and no application for execution of a decree* * * * shall be entertained by *any civil court* unless the plaintiff produces" a certificate from a Conciliator. It would be undesirable, I think, to interpose the compulsory process of conciliation in the case of petty and simple suits which a Village Munsif can try without any expense and without delay; but as long as the words "any civil court" remain as they are, undefined and unexplained, I think they must be held to include a Village Munsif's Court.

Section 48 a seeming omission.

94. There is a very serious blot in section 48, which excludes the time occupied before a Conciliator in the computation of the period of limitation prescribed for bringing SUITS, but omits to make any similar provision in the case of *applications for execution of decrees—vide* the words of the preceding section. Unless this omission is very soon supplied, it must happen that many "darkhasts" will be time-barred for no fault of the parties presenting them. Meantime, I have advised some of the Subordinate Judges, who have applied to me for advice upon the point, that whenever a darkhast nearly time-barred is presented to them, unaccompanied (in cases where it is necessary) by a certificate from a Conciliator, that they should enter on it the date of presentation merely, and then refer the applicant to a Conciliator.

Collusion of debtor and creditor before Conciliator.

95. I notice that it was anticipated by some of the opponents of the Bill in Council that advantage would probably be taken of the agreements referred to in section 44 to frustrate the provisions of sections 12 and 13 and the general policy of the Act. The same objection has been made to me by several persons. It is too soon yet to judge whether the anticipations will be realized; but it will be necessary for the Special Judge and his Assistants to keep a careful watch over the operation of such agreements and to report to Government if the provisions of the law are abused to defeat the policy of the law itself.

96. It may occasionally happen that the defendant to a suit is not discovered, or decided to be an agriculturist till some time during the hearing of a suit. In such a case should the court at once reject the plaint for want of a Conciliator's certificate, or should it merely defer the further hearing pending a reference to a Conciliator.

Conciliation gives warning to dishonest debtors.

97. The fear has been expressed to me in more quarters than one that the provision of the law which makes resort to conciliation compulsory will have the effect of giving to the dishonest debtor an opportunity of defeating his creditor by a fraudulent disposition of his property. Till conciliation is tried, no new suit can be brought, no old decree can be executed, no application can be even entertained by a Civil Court. The resort to a Conciliator will be simply a notice to the dishonest debtor, and he will have full opportunity of concealing or making away with his property, while the creditor will be deprived of the remedies which, under the Civil Procedure, he would be entitled to, namely, by applying for attachment before judgment or for immediate execution. It will be a serious matter if conciliation has this effect: but all we can do at present is to watch carefully, though hoping that no such effect will follow.

Chapter VII.

98. Chapter VII relates to the duties and powers of the Special Judge who is directed to inspect, supervise, and control the proceedings under Chapters II and IV of all Subordinate Judges and the proceedings of all Village Munsifs and Conciliators. The question has been asked whether, supposing a Subordinate Judge wishes to refer a legal point, in a suit falling under Chapter II for the opinion of the superior Court, he should make the reference to the High Court or to the Special Judge; and, if to the High Court, whether the reference should be forwarded through the District Judge or the Special Judge. I would be glad to have the opinion of the High Court on this point.

Village registration.

99. Chapter VIII, sections 55 to 63, provides for a new system of village registration. The appointments of Village Registrars having been only recently made, I have not been able to acquire any personal experience of the practical working of the system. I would merely

indicate a few of the objections that have been brought to my notice by qualified persons during the course of my tour. It has been objected that the provisions of section 56, especially the words "no instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money" are far too sweeping, and will tend to hinder and trammel most unnecessarily some of the simplest and most frequent dealings of life. The word "instrument" not being defined in the Act, it is presumed that the provisions of the section will apply to the following kinds of documents :—

Section 56, the word "instrument."

(1) A Samadaskhat or any writing in a Sowkar's or Bania's or shop-keeper's books written or signed by an agriculturist.

(2) Any letter or note addressed to a Sowkar or other creditor (*e.g.*, asking for more time), in which an acknowledgment of debt is made.

(3) Any admission of debt under section 20 of the Limitation Act.

(4) Any receipt for money or grain or other produce.

I am not sure whether it was the intention of the Legislature that the provisions of the Act should have such a far-reaching operation ; but I think it right to mention the objection which is represented to me as being felt as a great hardship.

100. I think that some of the rules made under section 61 are misleading and *ultra vires.* I allude specially to Rules 18 to 20. The section contemplates rules for the guidance of Village Registrars *as such* ; but the rules referred to relate to the registration of old instruments under section 71, and for this purpose the Village Registrars are to be deemed Sub-Registrars, and are to be governed not by the new Act, but by the Registration Act and the rules thereunder framed.

Rules under section 61.

101. I think it is to be regretted that the registration of old instruments has been made compulsory by section 71, and still more to be regretted that the duty of registering such instruments has been entrusted to the new and untried, and I fear little trusted, machinery of Village Registrars. There are not a few practical difficulties in the way. Many old instruments of the description referred to in section 71 are filed in pending suits, some of them already proved and recorded, others awaiting proof ; many such instruments are buried and locked away in the records of decided suits, and all such instruments are difficult of access to the parties interested ; but the requirements of the section apply to them. Some Subordinate Judges have given back such instruments to the parties who presented them in order that they might be registered within the time allowed ; but for a considerable time at first, after the passing of the Act, the Sub-Registrars refused to register them, not understanding the law and alleging that they had received no rules, orders, or instructions on the subject. Again, in many cases the executing parties are dead or have left the country. Again, it is pretty certain that in many cases the executants or their representatives, having now nothing to lose and much to gain by such denial, will be tempted to deny, or to pretend ignorance of the execution ; and then fresh difficulties of procedure and complications will arise, which the newly-appointed Village Registrars are not the men to understand or cope with. Another blemish in this section is as follows : The provisions of Chapter VIII take effect only from the date on which the appointments of Village Registrars were made, namely, the 1st April last : while the provisions of section 71 only apply to instruments "*executed before this Act comes into force,*" namely, the 1st November 1879. There is no provision in the Act for instruments executed during the five intermediate months. Instead of "executed before this Act comes into force," it should have been "executed in any local area before the appointment under the provisions of Chapter VIII of a Village Registrar for such local area." I think it would be desirable to repeal section 71 *in toto*, but if this be not done, endeavours should be made departmentally to induce the people to bring old instruments for registration to the Sub-Registrars, who are competent to deal with them, instead of to the new Village Registrars.

Doubts as to section 71.

102. The rules which have been framed under section 61 will considerably increase the duties and responsibilities of the old Sub-Registrars, and will at the same time materially lessen the number of instruments actually registered by them, and consequently reduce the fees they earn, so much so that it is doubtful whether their fees will ever cover the cost of the establishment which they are obliged to keep up. I need only allude briefly to this subject, as I believe it is already engaging the attention of the District Registrars and the Inspector General of Registration, who will, doubtless, bring it fully to the notice of Government.

Establishment of Sub-Registrars.

103. I would point out that section 67 is silent as to the authority which is to enforce the penalties therein prescribed.

104. In connection with section 69 it has been asked how is the Government Pleader to be remunerated, and what is to happen if he declines to act, or if he is engaged on the other side, and if no other "fit and willing" person is to be found.

105. I presume that section 70 is intended only to affect mortgages, liens and charges created after the passing of the Act; but, owing to the absence of express words, the point will to many seem debateable.

106. I have now touched upon most of the matters in connection with Act XVII of 1879 and its operation during the last five months, which it has occurred to me to bring to the notice of Government; and, in conclusion, I have only to express my conviction that it will require at least another full year of fair trial and careful watching to enable Government to arrive at any conclusive decision as to its general effects. I have also to apologize if I should have seemed in criticising its various provisions to have overstepped the limits of my duty. I would also venture to suggust that, if Government think fit, copies of this report should be sent for the information of Her Majesty's High Court, the Remembrancer of Legal Affairs, and the Collectors and District Judges of the four districts affected. For this purpose a few copies might perhaps be printed. The High Court and District Officers should know what is being done. I have the honour, too, respectfully to request that Government will be pleased at an early date, to favour me with any instructions or directions for my future guidance in connection with any of the points alluded to in this report, which seem to require special orders.

107. I beg to append, for the information of Government, the reports (in original) which I have received from Messrs. Larken and Bhide on the work performed by them during the travelling season.

D.

Monthly Return of cases decided by the Subordinate Judge of under Chapter II of Act XVII of 1879 during the month of

Nature of Suit.	For disposal.					Disposed of.															Special particulars.						Suits on the file at the close of the month.	Remarks.
		Instituted, re-admitted or received by transfer during the month.								Contested.							By transfer to the				Disposed of by Branch.							
	Arrears.	Not exceeding R10.	Not exceeding R100.	Not exceeding R500.	Total.	Plaint returned.	Dismissed.	Decided *ex-parte*.	Admitted.	Awarded wholly.	Awarded in part.	Rejected.	Total.	Abated or dismissed.	Withdrawn or compromised.	Disposed of by arbitration.	Special Judge.	Assistant Judge.	Other Court.	Total.	With Special Judge.	With Assistant or Subordinate Judge.	In how many cases defendant personally examined under section 7.	In how many cases past history of transaction investigated under section 12.	In how many cases reference to arbitration under section 15.	In how many cases decree directs payment by instalment.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
(1) Suits falling under clause (*a*) of section 3.																												
(2) Suits falling under clause (*w*), in which an agriculturist is defendant.																												
(3) Other suits falling under clause (*w*).																												
(4) Suits falling under clause (*x*), in which an agriculturist is defendant																												
(5) Other suits falling under clause (*x*).																												
(6) Suits falling under clause (*y*).																												
(7) (Suits falling under clause (*z*).																												
Total .																												

Note.—In the column of remarks please always give the total number of suits of all kinds (arrears, instituted, and disposed of) in your Court, including the totals shewn in this return, so that the proportion between the suits under Chapter II of Act XVII of 1879 and the entire number of suits may be readily perceived.

A. B.,
Subordinate Judge.

No. 78.

E.

Monthly Return showing Proceedings in execution and other Miscellaneous Proceedings under Act XVII of 1879 disposed of and remaining in the Court of the Subordinate Judge of during the month of

APPLICATIONS FOR EXECUTION OF DECREES AGAINST AGRICULTURISTS PASSED UNDER CHAPTER II.									SPECIAL PARTICULARS.				
For disposal.				Disposed of.									
Arrears.	Admitted on the file for any cause.	Received by transfer.	Total.	By attachment or sale of movable property.	By attachment or sale of immovable property.	Otherwise disposed of.	Total.	Remaining undisposed of at the close of the month.	In how many cases debtor discharged under section 19.	In how many cases Collector directed to manage under section 22.	How many agreements finally disposing of dispute received from Concilitor.	How many agreements for referring dispute to Arbitration received from Conciliator.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Date

A. B.,
Subordinate Judge.

F.

Monthly Return of Proceedings in Insolvency under Chapter IV of Act XVII of 1879 disposed of and remaining in the Court of the Subordinate Judge of during the month of

Applications for Declaration of Insolvency.									Special Particulars.						
For disposal.									Out of the total shewn in column 8, in how many cases						Remarks.
	Presented during the month.														
Arrears.	By Agriculturist Judgment-debtor against whom process has issued.	By Agriculturist Judgment-debtor against whom no Process has issued.	By Agriculturist against whom no decree has been passed.	By Decree-holder against Agriculturist.	Total.	Total (for disposal).	Total number of Applications disposed of during the month.	Remaining undisposed of at the close of the month.	Applications rejected.	Declaration of Insolvency made by the Court.	Receiver appointed.	Collector directed to manage under section 29.	Distribution finally made under section 32.	Insolvency Proceedings directed by Court under section 19.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

Date

A. B.,
Subordinate Judge.

To

A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, Poona. No. 80.

RESPECTED SIR,—We, the undersigned petitioners, beg most humbly and respectfully to represent to you the "disadvantages from the Deccan Agriculturists Relief Act No. XVII of 1879" in the humble hope that you will be so good as to take the representation into your kind consideration, and submit it for the favourable consideration of Government, with your observations on the subject.

1. The intention of Government is to relieve the agriculturists from indebtedness, but it is impossible to carry on the profession of agriculture without involving one's self in debt, because agriculture is a speculation. One is required to lay out money on land, and labour for twelve months, maintaining himself by borrowing.

If, unfortunately, the crops are damaged, the cultivator is required to ask from his creditor twelve months' time to pay off the debt. Besides, he is required to make provision for himself and his bullocks for the next year, expecting to get the crops that year. And the creditor, on his part, is obliged to lend money for the next year, in order to recover his past dues. Thus a creditor and a debtor stand in need of one another; but it appears that the legislators have not sufficiently considered this point.

2. Formerly there were money-dealings with the agriculturists, but then there was not so much distrust between a creditor and a debtor as now.

Money-dealings used to be carried on without being supported by documents. As the Government made the laws more and more stringent, so the traders commenced to take documents from the agriculturists. As the debtors denied debts secured on mortgage without possession, the creditors commenced taking mortgages with possession.

This caused distrust between the parties: as the loss of credit originated, the profession of agriculture was hindered. This hinderance has obstructed the produce. This Act will now occasion the sale of land and such other estates, because, when a cultivator needs money, he must sell his property, he having no other alternative.

3. The power given to the court in paragraph 2 of section 19 of the Act is not beneficial, because the section appears virtually to declare the agriculturists insolvents.

The money-lenders have now no hope of profit from carrying on money-dealings, because they think that, if they lend money in future, the transaction will end in the debtors being declared insolvent.

4. Hitherto the money-lenders have supported the agriculturists by giving them, on the occasion of the famine, grain, and money on the occasion of marriages and such other ceremonies, on the security of the future crop; such dealings have been carried on from generation to generation. And though several famines have prevailed, yet an Act so detrimental to the interests of Sowkars has never been passed.

5. In section 24 powers have been conferred upon the court to have agriculturists declared insolvent; but this is not beneficial. As a matter of fact, the agriculturists have been insolovent for the last five years. Since the enforcement of the "three years' Limitation Act," the expenses with regard to stamps to be used on suits, with regard to registration and other court expenses, increased. Consequently the agriculturists have become helpless and insolvent, therefore the limitation of twelve years, prescribed in section 72, should be made applicable in the case of money-lenders. By doing this, both the agriculturists and the money-lenders will be protected, and the dealings continued. This measure would be advantageous to Government, save land from sale, and facilitate the realization of assessment. The small Sowkars who have borrowed money from others, and lent it to the agriculturists, should be allowed a longer period than that allowed to agriculturists, in order to enable them to pay their creditors.

6. Section 19 falls heavily upon the class of "small village Sowkars" alone, and upon no others.

The "great Sowkars" or "bankers" realize their dues by the sale of the estate of the "small Sowkars." Government suffers no loss, because the "small Sowkars" borrow from the "large Sowkars" to pay assessment. Why should then the provisions of the section be made applicable in the case of "small Sowkars?" There seems no objection to make the provisions equally applicable.

7. In sections 12 and 13 powers have been conferred upon the court to inquire into the history of a case, and to take an account from the commencement of the transaction to the institution of the suit, but there is no limit to the number of years to which the court may go back. Interest thus amounts to more than the principal. Interest is required to be paid every year to the "great Sowkars" until the principal is paid off. The "small Sowkars" are required to pay interest every year, just as assessment is paid to Government, every year.

8. In section 230 of Act X of 1877 it has been enacted that decrees passed before February 1887 shall be enforced up to March 1880 only; this is not beneficial, because the "ryot" suffers from it. Dealings are not carried on by placing reliance on the law. The

old practice should therefore be continued without causing any hinderance, and the limitation of twelve years may be made applicable to old decrees in accordance with section 72.

9. On the occasion of the "famine" the money-lenders supported the families of the insolvent cultivators by lending them money, and now it has become difficult to realize even the principal, not to speak of interest. Now the Government, to relieve the agriculturists, have made a law to declare them insolvent; but the people will be reduced to a deplorable state if the transactions with the agriculturists are stopped. Not long ago disturbances took place at several places in connection with the destruction of documents. Government are aware of those disturbances.

10. In the four districts, *viz.*, Nagar, Poona, Satara and Sholapur, there are good and valuable lands, but no one directs his attention towards them. Owing to the disagreement between the agriculturists and the money-lenders the produce has decreased, and the Government assessment is not punctually paid, and the agriculturists are not protected in every respect; therefore Government should render such assistance to both parties as will protect them, and such as will increase the annual produce. This would be advantageous to all, and prevent the recurrence of famine.

11. Now, in Nagar, one Mahadu *valad* Hari Mali, residing in Mali Wada, in the Taluka of Nagar, has taken up three bighas of garden land from Amrita Sonar, for potato plantation, on condition to give one-third of the produce to Amrita Sonar for his land. Amrita will receive his share, valued at about R100. Mahadu Mali having no potato seeds asked Tukaram to lend him R25. Tukaram said "I cannot lend you money on account of the stringency of the law; for, in case I file a suit, and the court awards me R5, I must take it, so I cannot give you money; but if you want potato seeds, I will give you as many as you want; but I will take one-third of the produce without paying any cost." Such being the case, Mahadu Mali was obliged to consent to the terms. The value of the potato seeds was about R25. So one-third of the produce will go to Tukaram on account of the seeds supplied by him. Under these circumstances Mahadu Mali will have only one-third of the net produce, the value of one-third will be about R100, whereas the expenses will be as follows:—

	R
One pair of bullocks for three months at R15 per month	45
Expense of sowing the potato seeds	10
Expense of weeding out grass	6
Expense of rolling earth over the plantation	10
Expense of manure	10
Pay of two servants for three months at R5 per month	30
Leather "mote"	7
Rope	6
Expense of digging out potatoes	10
TOTAL	134

Mahadu has, on the whole, spent R134. If he gets good produce, its price will be R100. If not, not even R50. Taking the produce to be the best, he has suffered a loss of R34. If Mahadu Mali were able to borrow R25 on interest, he would have had to pay R1-8 as interest for three months, at the rate of R2 per cent. per mensem. But, on account of the stringency of the law, he is required to suffer a loss R75. If Mahadu were able to borrow R25, he would not have had to suffer a loss of R34; on the contrary, he would have maintained himself for two or three months.

12. The agriculturists are oppressed by the village Mahars and Balotes. If no produce is given to them in accordance with their pleasure, they do not allow people of other villages to do their work, nor do they do it themselves, and when the crops are up, the "Mahars," without any right, take them away without permission. If no produce is given to them as they wish, they *kill* the cattle of agriculturists, and therefore the agriculturists cannot keep valuable cattle, nor can they bestow labour on the land as much as is desirable. If a complaint is lodged, it is difficult to prove the offence of poisoning the cattle, and the offenders escape unpunished.

They do not fear to commit the offence again, and through malice kill more animals. An agriculturist suffers a loss of R20 or 25 when one bullock is killed. When a Mahar kills one bullock, he gets a profit of R15 in the shape of a skin and flesh. The agriculturists thus suffer a loss, whereas he can get no loan. Thus the agricultural work is hindered, and the time of bestowing labour on the land passes away, and less produce is obtained. Therefore the Government should fix certain amounts and prevent the crops being carried away. This

will put a stop to the oppression from the Balotas. There would be no loss if a certain amount were fixed for a certain amount of produce. The "Mahars" have no right to the produce; but it is required to be given because they kill bullocks.

13. The "Mahars" always commit thefts, and keep stolen articles in their houses. The thefts cannot be proved. On enquiry it will be found that the "Mahars" have more property in their houses than the agriculturists have.

14. The four districts, *viz.*, Nagar, Poona, Satara and Sholapur are in a distressful condition on account of the famine, and therefore there should be no taxes, such as license tax and others in these districts. The people have suffered a loss instead of gaining income during the famine. Government should take this into their consideration.

15. Government have reduced by one-half the stamp duty leviable on suits and execution for decrees, but they have entirely put a stop to the employment of pleaders to assist the parties. It is true that the assistance of pleaders is not needed in simple cases; but the expense resulting from a party's personal and frequent attendance at the court would be more than what would be required to be paid to a pleader. As decisions cannot be passed at once by the courts, the parties will have to stay at the courts all along, and suffer loss in respect of their professions. If they fail to attend the courts in time, their claims will be dismissed or heard *ex-parte*, and the court will not know the true circumstances.

16. If the Government think that it is very expensive to engage pleaders to defend suits, the retaining fee and commissions paid to pleaders may be reduced, and the old practice continued, because parties cannot state their case with a knowledge of the law.

17. It has now become very troublesome and expensive to get documents registered and attested. This has also caused great inconvenience. Hitherto only a two-anna stamp was required for a document for R10; now the registration fee is the additional expense. Great time will be lost in getting the documents registered; this matter may also be considered.

18. The authorities do not completely know how the agriculturists became debtors. Some of them blame the sowkars only. The following illustration may be considered :—

Balaji Yeshvant Vakil has taken up for cultivation 15 bighas of garden land and 30 bighas of arable land. He has had experience of the land for two years, as follows: Half of the arable land he rented on *bati* tenure, that is, he was to take half the produce of the land.

Jowari was sown in 1878 in the dry crop land, but the land yielded no crop that year, and therefore the owner had to pay R9 as assessment without getting any crop. Seeds of the value of R9 and labour of servants, and bullocks of the value of about R10, were lost in vain. Maka (Indian-corn) of the value of R4 and wheat worth R6 were sown in the garden land, but it produced no crops. The owner had to pay R14 assessment and 14 annas local fund. Besides R96 on account of two servants at R8 each per mensem for 12 months, R96 on account of 4 bullocks at R8 per month for 12 months, and R25 on account of extra labour, such as weeding out grass, etc. The total expenditure on account of the land (garden and arable) amounted to R259-14-0 as follows :—

	Assessment.		Seeds.		Servants and bullock.	Miscellaneous.
	R		R		R	R
Arable land . .	9		9		192	25
Garden land . .	1,4=14		10		...	...
	23,14	+	19	+	192	+25 = 259-14-0

The owner suffered so much loss. Out of the produce of the next year, it is impossible for him to maintain himself, defraying the above expenses. These are the causes of indebtedness.

We beg to bring this to the notice of Government.

19. It has been brought to the notice of Government that the traders take double the quantity of grain they lend within 8, or 4, or 2 months of the bargain; but it seems to us clear that the people who brought this to the notice of Government are ignorant of the art of trade. This trade is equally profitable, or causes loss to both the parties equally. Suppose in July grain was selling 7 seers per rupee, when the traders lent grain on condition to take 2 candies

for 1 candy lent. Now the grain is selling 12 seers per rupee. If a trader then lent 7 seers of grain worth one rupee, he would be said to have now got only 2 seers at the present rate. But in case the grain were sold more than 12 seers per rupee, or, say, in other words, more than 14 seers per rupee, the trader would suffer a loss.

20. In Marwar a trader will not deal with agriculturists with whom another trader is dealing. A creditor will not deal with an agriculturist unless he obtains consent or a receipt from the original creditor of the agriculturist. The agricultural work is not hindered owing to an agriculturist's dealings with a sowkar, just as the management of a family is not hindered owing to a wife having a husband. In the same way an agriculturist cannot mortgage or sell his property to another sowkar without the attestation of his old sowkar. When the old sowkar is unwilling to lend more money to his debtor, he settles the old debt, gives him a receipt, and then permits him to borrow from another sowkar. Thus, one is not required to undergo court expenses; nor are the traders afraid of carrying on their dealings; no period is prescribed by law within which suits should be filed. Suits are instituted whenever occasions arise.

21. Government assessment on each land is not received in cash, but one-fifth of the annual produce is given every year in the harvest season. Government peons come as soon as the crops are up, and take away one-fifth the produce. The agriculturists are then allowed to sell the remaining crops. Owing to this arrangement the Balotes and Bhils do not commit thefts or riots. This is the practice prevalent in Marwar.

22. As Government takes assessment in kind, the agriculturists are not required to borrow money. This is the custom in Marwar.

23. In consequence of the opening of the railway, the agriculturists cannot get hire for their carts and bullocks. Formerly, when there were standing crops, they maintained themselves by hiring their carts and bullocks. As they do not get hire now, they are required to feed them at their own cost, and they are now required to sit idle and maintain themselves without earning anything; consequently they become debtors.

24. Government have advanced money for railways, and receive an income from the profits. In the same way, if they open a shop to lend money to agriculturists for land, and advance them money, the agriculturists would make the bargain profitable to Government, by borrowing money and returning it with interest according to the usual practice. Thus the assessment would be realized in time, and without any hinderance. The agriculturist will not have to go to another person to borrow. Government will gain experience by the trade. In the aforesaid four districts the agriculturists are in a deplorable condition on account of the famine, and have no money. So Government should pay full attention to this subject.

25. Government have, at a cost of R20,000 per month, appointed the establishment consisting of the "Special Judge" and the "Subordinate Judge," etc., to bring the Act into operation; they have done this to relieve the agriculturists from indebtedness; but we fear it will cause much loss to the traders. But we think that if the above amount were lent to agriculturists—as suggested in paragraph 24—some people would be relieved, and the Government money would not be wasted. Government should take this into their mature consideration.

The above circumstances have been stated in detail; they may be considered, and if there be any improper words, they may be corrected, and we may be pardoned. Government should take steps to prevent the disagreement that would take place between the traders and the agriculturists, and to support them as children. Government should point out a way which would be advantageous to itself, and contribute happiness to the ryot. Gulabchand Lachhimandas Marwadi, trader and agriculturist, and Bapurao Hari Mungi, a pensioned Head Accountant, are of the following opinion :—

The Regulations of 1827 protected all the people, and gave no trouble or expense to Government in any way. New laws were not framed every year. The traders never hesitated to carry on their dealings. Now new laws are frequently framed, and so the traders have lost their trust in laws. The traders and the agriculturists do not know what laws may be framed by Government, and on what occasions, nor what difficulties may present themselves in their way. Therefore they are very sorry, and cannot attend to agricultural work. Both the Government and the traders should point out a way by which the agriculturists would be enabled, to get timely pecuniary aid. This would do good to all.

26. The opinion of the "old European officers" (Collector and Judge), who have retired on pension since 1873, should be taken on this subject before adopting new regulations.

H.

IN HER MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY. No. 81.

COPY of the judgment of the High Court in the cases of—

SURYAJI valad DARKUJI and BAPU valad SURYAJI, ... *Plaintiffs,*

versus

TUKARÁM valad VITHUJI and MAHADU valad VITHUJI . . . . *Defendants,*

referred, under the provisions of section 617 of Act No. X of 1877, to the High Court by the Subordinate Judge and Judge of the Court of Small Causes at Rahuri, with his letter No. 6, dated the 14th day of February 1880, and forwarded by the Judge of Ahmednagar with his letter No. 405, dated the 17th idem.

Coram.
Westropp, C. J.
M. Melvill, J.

"The Court" mentioned in sections 12 and 13 of Act XVII of 1879 is the court mentioned in section 11, which must be "a court within the local limits of whose jurisdiction the defendant resides, and not elsewhere." But suit instituted previously to the 1st of November 1879 need not necessarily be instituted against the defendants therein in a court within the local limits of whose jurisdiction the defendants reside. Such suits may have been instituted where the cause of action arose (Act X of 1887, section 17), which very frequently is not where the defendants reside. Hence the Court thinks that sections 12 and 13 of Act XVII of 1879 are applicable only to suits instituted upon or after the 1st November 1879, as it is not probable that in suits against agriculturists' instituted before that time in those parts of the Deccan in which Act XVII of 1879 is in force, one mode of trial should be adopted in Courts within whose local jurisdiction the defendants reside, and another in courts within whose local jurisdiction the causes of action arose, but where the defendants do not reside.

Dated this 23rd day of March 1890.

ENCLOSURE IV.

From A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, to the Secretary to the Government of Bombay, Judicial Department, No. 503, dated Ahmednagar, the 2nd July 1880. No. 82.

With reference to the remarks on Chapter VI—the Conciliation Chapter—of the Deccan Agriculturists' Relief Act, contained in paragraphs 91 to 97 of my report No. 386 of the 7th ultimo, I have the honour to bring to the notice of Government, for such consideration as may be thought necessary, a few other matters which have been more recently forced upon my attention.

2. I pointed out in the 92nd paragraph of the above report that, whereas Chapter VI contemplates only two kinds of agreements, both of which are to be sent to the civil court, it will often happen that the parties, after appearing before a Conciliator and receiving the benefit of his friendly offices, may come to some mutual agreement or understanding that does not require any further intervention on the part either of the Conciliator or the Civil Court. Cases of this kind have already occurred, and the Conciliators have been asking me what they should do, as the Act does not guide them. I think provision should be made for such cases either in the Act itself, or by a rule under section 49. I have answered the Conciliators that they should allow the applicant to withdraw his application, if the dispute is privately settled, and that they should enter in their register the reasons of such withdrawal. It will not unfrequently be the case that a Conciliator may exercise his influence more usefully and effectually in the interests of peace and concord by persuading the contending parties to come to a private understanding which will terminate the dispute, than by persuading them to execute a written agreement which, when filed in a court, will have the force of an unappealable decree.

3. By section 44 of the Act it is only when the agreement is one finally disposing of the matter in dispute that the Conciliator is to send it to the court. But cases have already occurred in which an agreement has been duly forwarded to the court, but the court, on scrutinizing it, finds that it is not in reality an agreement finally disposing of the matter. One Subordinate Judge has asked me what he should do in one such case. The Act is silent on the point; but I ventured to reply that he should remit the agreement back to the Conciliator for further consideration. This leads me to observe that there ought to be some provision

in the Act enabling a court to remit an agreement to the Conciliator under certain circumstances. It seems to me that an agreement should be remitted by a Court *suo motu* and without waiting for cause shewn under the following circumstances:—

(*a*) if the agreement is one that does not finally dispose of the matter in dispute;

(*b*) if it is so vague or indefinite, or so faultly framed as to be incapable of taking effect as a decree;

(*c*) when an objection to the legality of the agreement is apparent upon the face of it.

The circumstances mentioned in (*b*) and (*c*) are similar to those for which an *award* may be remitted by the court under section 520 of the Civil Procedure Code. It would not, I fear, be competent to provide for such procedure by a rule under section 75, for such a rule would hardly be consistent with the terms of section 44 which directs that the Court *shall* order the agreement to be filed, ***unless cause has been shewn to the contrary.***

4. The question has lately been asked what grounds were contemplated by the Act in section 44 as constituting a sufficient cause why an agreement should not be filed in Court. Here again the Act is silent. It seems to me, however, that any of the reasons (*a*), (*b*), (*c*), mentioned in the preceding paragraph, would constitute sufficient cause and in addition to them also any of the reasons mentioned in clauses (*a*) and (*b*) of section 521 of the Civil Procedure Code, as being sufficient to set aside an award. The following cases have been already put to me: (1) supposing that a Conciliator induces the parties to come to an agreement on a claim which would be time-barred if brought in a civil court, (2) or that he effects a like settlement on a claim based on a document that would be inadmissible in a civil court for want of registration or for want of stamp. Conciliators have asked me whether they should accept applications that, as far as their knowledge of law goes, seem to them to be barred in some such way, and Subordinate Judges have asked me whether they should receive such agreements and order them to be filed. I mention these various matters here in order that they may receive consideration, if the question of immediately amending the Act is soon to engage attention.

5. Section 45 enacts that "when the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the court having jurisdiction in the matter, and such court *shall cause it to be filed* and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure." Instead of the words "shall cause it to be filed," it would be better to use the words "shall receive it," because the process of filing belongs to a subsequent stage of the proceedings under sections 523 and 524, *viz.*, after notice has been duly served by the court and opportunity of showing cause has been granted—*vide* sections 523 and 524. As the section stands, the cart seems to be put before the horse.

6. In section 47 there is an omission, somewhat similar in its character to the *casus omissus* which in my report I pointed out in section 71. The effect of section 47 is that, once a Conciliator has been appointed, fresh suits to which an agriculturist is a party cannot be instituted without the Conciliator's certificate, and in like manner applications for execution of a *decree passed before the date on which this Act comes into force, i.e.*, before the 1st November 1879, cannot be entertained without a like certificate; but no provision is made for the case of applications for execution of decrees passed after the 1st November and prior to the appointment of Conciliators—an omission which was evidently not intentional, and for which no reason is at all apparent. Hence, if a decree happened to have been passed on the 31st October last, an application to execute it must now be accompanied by a certificate; but if the decree happened to have been passed on any day between 1st November 1879 and the 30th June 1880, no such certificate is in this district (Ahmednagar) necessary. To fulfil the intention of the Legislature, namely, to postpone litigation till after an attempt at conciliation should have been made, reference should have been made in this section to the date of the Conciliator's appointment instead of to the date of the passing of the Act.

7. I think a rule should be framed under section 49 limiting the time during which a Conciliator may allow an application to remain pending before him. If after a certain period, say three months, he cannot succeed in bringing about an amicable settlement, he should be bound, on the request of either party, to grant his certificate.

8. I have the honour to request that this letter, together with my Nos. 399 and 426, dated 11th and 16th June 1880, respectively, may be considered as addenda to my report No. 386 of the 7th ultimo.

ENCLOSURE V.

Extract from the Proceedings of the Government of Bombay, in the Judicial Department,— No. 5590, dated the 14th August 1880. No. 83.

READ—

Letter from the Remembrancer of Legal Affairs, No. 989, dated 6th August 1880—States that, as directed in Government Resolution No. 4974, dated 22nd July 1880, he prepared a rough draft of a Bill to amend section 71 of the Deccan Agriculturists' Relief Act and of some rules to supersede Nos. 18—20 of the present Village Registrars' Rules, and sent it to the Special Judge and the Inspector General of Registration for the favour of their opinion and suggestions. Submits, for the orders of Government, the draft amended in accordance with such of the suggestions received from the above two gentlemen as have his concurrence. Forwards also copies of the Special Judge's and the Inspector General of Registration's replies, with marginal notes, conveying his opinion upon the principal points on which he and they differ.

RESOLUTION.—The draft section and the draft rules prepared by the Legal Remembrancer, after consultation with the Special Judge and the Acting Inspector General of Registration, are approved.

2. The section should be incorporated in the draft amended Bill regarding which Government have recently passed orders.

3. It is possible that some of the further amendments to the Act which have been suggested may, if adopted, entail some modification of draft section 71. This point should not be lost sight of by the Legal Remembrancer.

Telegram—from Home, Revenue and Agricultural Department, Simla, to the Government of Bombay,—dated 28th September 1880. No. 84.

Your letter No. 6299 of 14th—Amendment, Deccan Agriculturists' Relief Act. Please forward reports and orders on which section 12 of Bill is founded, *viz.*, Resolutions Nos. 5567 of 13th August and 4974 of 22nd July, with all connected papers.

From C. G. W. MACPHERSON Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Officiating Secretary to the Government of India,—No. 6757, dated 5th October 1880. No. 85.

As requested in your telegram of the 28th ultimo, I am directed to forward to you herewith copies of the papers as per margin, and to state that copies of the papers on which this Government Resolution No. 4974, dated the 22nd July last, was passed, will be sent to you shortly.

Government Resolution No. 5567, dated 13th August last, and its connected papers, being letters from the Special Judge under the Deccan Agriculturists' Relief Act, Nos. 386,* 399, 426, and 503, dated, respectively, the 7th June, 11th June, 16th June and 2nd July 1880.

* Printed at page 227.

Government Resolution No. 4974, dated 22nd July 1880.

Extract from the Proceedings of the Government of Bombay, in the Judicial Department,— No. 5567, dated Bombay Castle, the 13th August 1880. No. 86.

READ—

Letter from Dr. A. D. Pollen, Special Judge under the Deccan Agriculturists' Relief Act, 1879, No. 386, dated 7th June 1880—Submits, as directed in paragraph 12 of Government Resolution No. 183, dated 12th January 1880, a report as to the work done during the fair season by himself and the two Assistants appointed under Act XVII of 1879, and as to the manner in which the Act has hitherto operated.

Further, letter from Dr. A. D. Pollen, Special Judge under the Deccan Agriculturists Relief Act, 1879, No. 399, dated 11th June 1880—Brings to notice, in continuation of his report No. 386, dated 7th June 1880, and with special reference to its 85th and 86th paragraphs, that he has learnt that the High Court have decided the important question as to the restrospective effect of sections 21 and 22 of Act XVII of 1879. States that it has been ruled that these sections do not apply in the case of decrees passed before the 1st November last, but he very much doubts whether this ruling is in accordance with what the intention of the Legislature was. Forwards a copy of the judgment referred to, that it may be annexed to his report as Appendix I, so that, if the question of amending the Act comes up for consideration, this point may not be lost sight of.

Further, letter from Dr. A. D. Pollen, Special Judge under the Deccan Agriculturists' Relief Act, 1879, No. 426, dated 16th June 1880—States that in paragraph 33 of his report No. 386 of 7th June 1880, he made allusion to the amount of work that had devolved upon the recently appointed Village Munsifs as far as the returns received by him up to date enabled him to do; that these returns only covered the period up to the 30th April last; that he has now received later information from some places; and that he thinks it right to bring to the notice of Government, by way of an *addendum* to his report, that there has been a sudden, extraordinary, and unexpected influx of work into the courts of the two Village Munsifs of Ahmednagar and Bhingar. Makes remarks.

Further letter from Dr. A. D. Pollen, Special Judge under the Deccan Agriculturists' Relief Act, 1879, No. 503, dated 2nd July 1880—Brings to notice, with reference to remarks on Chapter VI (the Conciliation Chapter) of the Deccan Agriculturists' Relief Act, contained in paragraphs 91—97 of his report No. 386 of the 7th June 1880, for such consideration as may be thought necessary, a few other matters which have been more recently forced upon his attention. Requests that this letter, together with his Nos. 399 and 426, dated 11th and 16th June 1880, respectively, may be considered as *addenda* to his report No. 386 of 7th June 1880.

RESOLUTION.—The Deccan Agriculturists' Relief Act came into force on 1st November 1879.

Extent.

2. With the exception of four sections, the provisions of the Act apply only to the four Collectorates of Poona, Sholapur, Satara and Ahmednagar, which form the three judicial districts of Poona, Satara, and Ahmednagar.

Special machinery to carry out the provisions of the Act.

The Special Judge and his Assistants.

3. To superintend the introduction of the Act Dr. Pollen was appointed Special Judge under the provisions of section 54, and assumed charge of his duties on 5th January 1880. Mr. Larken and Rao Bahadur Vishnu Moreshwar Bhide were at the same time appointed, respectively, Special Assistant and Special Subordinate Judge.

4. To meet a portion of the extra expenditure involved in these appointments Government resolved to hold in abeyance the appointment of Senior Assistant Judge, Sholapur, and the establishment of that officer was utilized to furnish establishments for the newly-created offices.

Twelve Additional Subordinate Judges.

5. The four districts to which the Act applies comprise 37 talukas, and with a view to facilitate a thorough inquiry into, and a prompt disposal of, suits within this area, Government decided upon increasing the number of Subordinate Judges from 24 to 36, thus providing, except in one instance, a Subordinate Judge for every taluka. These extra appointments, however, did not take effect until the commencement of June.

6. In addition to this it was necessary, besides nominating Village Registrars, to find men fit and willing to discharge the honorary duties of Munsifs and Conciliators.

7. Village Registrars have been appointed almost exclusively from amongst the Sub-Registrars and the Village Kulkarnis.

Munsifs.

8. Between 30 and 40 Village Munsifs have been appointed in each district for the trial of certain suits, the subject-matter of which does not exceed R10 in value, and the number of suits brought in these courts is already considerable. Government have in some cases found it necessary to place a peon at the disposal of the Munsif to assist him in obtaining the attendance of the parties, and in the larger towns it will probably prove necessary to arm the Munsifs with powers to compel the attendance of parties and witnesses.

9. The institution, though no doubt somewhat primitive, secures a prompt and inexpensive disposal of petty suits, and there can be little question that the system will prove popular and beneficial, provided that Native gentlemen can always be obtained fit and willing to discharge gratuitously duties which may occasionally be somewhat arduous.

10. The number of suits brought in the Courts of the Village Munsifs of Ahmednagar and Bhingar is very noticeable, but it is to be observed that they are chiefly against indigent weavers and have no particular connection with distressed agriculturists.

11. The Special Judge reports that though he detected a certain number of mistakes and misapprehensions in the work of the Village Munsifs, yet these officers appear to be fairly competent and likely, after a little experience and instruction, to do good work. His proposal to hold an annual Conference of Village Munsifs at the head-quarter station of the Subordinate Judge of each taluka appears to Government to be a good one, as also does his suggestion that he should prepare a simple manual of instruction for their guidance. They are accordingly approved.

12. Sanction is also given to the proposal made by the Special Judge that he should be authorized to arrange, in consultation with the District Judges, for the occasional loan of the services of a Karkun from one of the regular Courts to give clerical aid to a Village Munsif who has really heavy work. Care must be taken, however, that such an arrangement is quite

exceptional and is made for the briefest possible period, as there must always be a danger of the Karkun usurping the functions of the Munsif.

Conciliators.

13. Fifty-four Conciliators have been appointed for the Poona District, 58 for Ahmednagar, 85 for Satara and 124 for Sholapur.

14. It was the wish of Government to arrange, if possible, for the division of each taluka into a number of village groups, each with its set of Conciliators. It was found, however, that the number of gentlemen fit and willing to act in this capacity was not sufficient to provide two or three Conciliators for each village group, and it therefore became necessary to make the taluka rather than some smaller sub-division the conciliation unit, and to give the conciliators in each taluka concurrent jurisdiction throughout it.

15. This was accordingly done in Poona, Ahmednagar, and Satara, but in Sholapur, in which district the number of Conciliators available was comparatively large, a nearer approach has been made to the village group system. The district has been divided into 41 Conciliation Circles, each with its own set of Conciliators, but as in some circles the number of Conciliators seemed insufficient, it was considered advisable to give the parties a wider choice by conferring upon Conciliators resident at the taluka towns jurisdiction throughout the whole taluka. Most of the litigation of a taluka gravitates towards the chief town, where also the more intelligent men of the neighbourhood are, as a rule, to be found, and the above arrangement, though not free from objection, seemed the best which could be made to meet the difficulty of some circles being scantily provided with Conciliators.

16. Government trust, however, that more gentlemen fit to act in this capacity will gradually come forward, and that it will be possible ere long to introduce the village group as the sole conciliation unit in each district.

Results of the Act.

17. The most remarkable feature in connection with the introduction of the Act is the great decrease in the number of suits instituted. This decrease seems due to two causes, *viz.*:—

Decrease in the number of suits.

(1) the enlargement under section 72 of the period of limitation in the case of suits against agriculturists;

(2) the fact that many suits have been compromised or have not been instituted owing to the uncertainty of the parties as to the way in which some of the novel provisions of the Act will operate and owing to the fears entertained by creditors as to the results of the Courts going behind their bonds.

18. The number of suits instituted in the four districts between the 1st November and the 20th April, the date on which the Courts closed for their annual vacation, has been as follows:—

Year.	Number of suits instituted between 1st November and 20th April.
1875-76	19,594
1876-77	15,963
1877-78	13,547
1878-79	14,578
1879-80	6,037

19. Litigation would therefore appear to have shrunk to less than half of its normal proportions, the decrease being greatest in those courts whose jurisdiction is over an almost purely rural population.

20. Of the 6,037 suits instituted during the period in question, 4,100 fell under Chapter II. Of these, 1,879 were disposed of, 360 of the number having been decided *ex-parte*. This number of *ex-parte* decisions is still too large—a result owing to a misunderstanding on the part of the Subordinate Judges of the provisions of section 7. Compared, however, with former years, when 90 per cent. of bond suits were decided *ex-parte*, the improvement is very great.

Insolvency.

Suits for an account and for redemption.

21. Little advantage has as yet been taken of the provisions regarding insolvency, and very few suits for an account or for redemption have been instituted.

22. These latter will no doubt increase as the provisions of the Act become better known, but it seems questionable whether many ryots will care to avail themselves of the insolvency provisions, as to an unenterprizing class of men, the advantages of a fresh start in life are not usually such as to counterbalance the odium incurred by a confession of bankruptcy.

Payment by instalments.

23. Free advantage has, however, been taken of the provisions regarding payment by instalments.

Supervision.

24. As was to be expected on the introduction of an Act containing many novel provisions, many mistakes and misapprehensions have occurred among the Subordinate Judges. The Special Judge has, however, personally visited and inspected 18 out of the 24 Subordinate Courts which existed up to the 1st of June, and he and his Assistants have scrutinized nearly every decided suit and a large number of the pending suits. This close scrutiny is probably, as the Special Judge thinks, an ample equivalent for the right of appeal, and though, should the number of uits increase, the labour of supervision will be greater, yet, on the other hand, much of the time of the Special Judge and his Assistants, which has hitherto been taken up in getting into order the machinery for working the Act, will now be available for supervision.

25. The period during which the Act has been in operation has not been sufficiently long to enable a judgment to be formed as to whether its provisions will be really as beneficial as is hoped, but it is satisfactory to find that several of the dangers which were apprehended have not as yet arisen: there has, for instance, been no perceptible increase in sales of land outright, there has not been a rush of cultivators anxious to declare themselves insolvent, and the withdrawal of the right of appeal in certain cases does not seem likely to be followed by any evil results.

26. The supervision of the Special Judge and his Assistants has been satisfactory, although it is to be regretted that Mr. Larken's tour was curtailed in consequence of that officer's serious illness.

27. In connection with the other results of the Act, it is necessary that the increased expenditure and diminished receipt it involves to Government should be carefully watched. Dr. Pollen should be requested to submit a special report on this point after consulting the Inspector General of Registration and Stamps.

Difficulties of Interpretation, etc.

28. In the latter portion of his report and in his supplementary report of the 2nd July, Dr. Pollen dwells at some length upon various doubts and difficulties which have been felt or which are anticipated in connection with the meaning of some of the sections of the Act.

29. Some of these questions have already been discussed, others appear to be founded upon hypothetical cases which do not call for immediate attention, but several real difficulties seem to have come to light.

30. In any case, however, the views of Government that this or that word or section had this or that meaning would have no legal force, and, failing a series of judicial decisions, the only method by which the meaning of the Act can be rendered clearer and defects remedied is by fresh legislation.

31. The points raised by Dr. Pollon should therefore be referred to the Legal Remembrancer, who should be requested, when submitting his report thereon, to submit also a draft amended Act containing such alterations of the existing enactment as the experience of the last nine months would appear to indicate as necessary.

(True Extract),

C. G. W. MACPHERSON,

Acting Under Secy. to the Govt. of Bombay.

From A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay,—No. 399, dated Ahmednagar, the 11th June 1880.

In continuation of my report No. 386, dated the 7th instant, and with special reference to its 85th and 86th paragraphs, I have the honour to bring to the notice of Government that I have learned, since the submission of my report, that the High Court have decided the

important question as to the retrospective effect of sections 21 and 22 of Act XVII of 1879. It has been ruled that these sections do not apply in the case of decrees passed before the 1st November last; but I very much doubt whether this ruling is in accordance with what the intention of the Legislature was. I beg to forward a copy of the judgment referred to, that it may be annexed to my report as Appendix I, so that, if the question of amending the Act comes up for consideration, this point may not be lost sight of.

Judgment in Application No. 32 of 1880 under Extraordinary Jurisdiction. No. 88.

DIPCHAND GOTAMSHET GUJAR, Proprietor and Manager of the Firm of Tribhuvan Kisanji . . . . *Applicant,*

versus

TARACHAND DALICHAND, deceased, by his heirs and sons Gokaldas and others, . *Opponents.*

Application against the order of Rao Saheb DWARKANATH NARAYEN RANDIVE, Subordinate Judge of Patas, in Darkhast No. 940 of 1879.

The provisions of Chapter II of the Deccan Agriculturists' Relief Act (XVII of 1879) are by section 3 of that Act expressly rendered applicable to suits instituted on or after the 1st November 1879 only, the day on which the Act came into force (section 1). The provisions of Chapter III, from its commencement (section 11) down to and inclusive of section 18, also seem to be purely prospective, and so it has been expressly decided as to sections 12 and 13 by a Division Bench of this Court on the 23rd March last, upon a reference from the Subordinate Judge of Rahuri in the case of *Suryaji* versus *Tukaram* [a]. The 19th and 20th sections (in the same Chapter) are, however, rendered expressly applicable to decrees passed before as well as to those passed after the coming into force of the Act. There is not any such specification in sections 21 and 22 of decrees passed before the coming into force of the Act. This imperfect circumstance coupled with the special provision contained in the second clause of section 22, which appears to us to be inapplicable to any case in which the decree had been made before the Act came into force, has led us to the conclusion that neither section 21 nor section 22 was intended by the Legislature to apply to decrees made previously to the coming into force of the Act. Section 21 enacts that "no agriculturist shall be arrested or imprisoned in execution of a decree for money." Section 22, clause 1, enacts that "no agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists." As a substitute or compensation for the right of arrest and imprisonment, and the right to attach immoveable property whereof the money decree-holder was thus deprived, the Legislature proceeds by the 2nd clause of 22 to provide as follows: "But the court may, *when passing a decree against an agriculturist or at any subsequent time*, direct the Collector to take possession for any period, not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property, and deal with the same for the benefit of the decree-holder in manner provided by section 29." The words "when passing a decree against an agriculturist" cannot be applied to any decrees made before the coming into force of the Act, and the words "or at any subsequent time" can only be applied to a time subsequent to a decree passed under the Act. The result of this is that no compensation is provided for any decree-holder who was such before the coming into force of the Act. Although if section 21 and the 1st clause of section 22 were applied to such a decree-holder, he would be thereby deprived of the right to enforce his decree either by arrest or imprisonment of his debtor, or by attachment or sale of his immovable property, he having already, by the Civil Procedure Code (Act X of 1877), section 266, clauses (*b*) and (*c*), been debarred from resorting for satisfaction to the implements of husbandry and cattle or the materials of the houses and other buildings belonging to his agriculturist debtor, which implements of husbandry and cattle, in nine hundred and ninety-nine cases out of a thousand, constitute his moveable property. We cannot think that the Legislature meant quite to say that the decree-holder, who became such before Act XVII of 1879 came into force, should not be entitled to enforce his decree by any means what-

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[a] Printed Judgments of 1880, page 80.

ever as would virtually be the result of holding that section 21, and the first clause of section 22 applied to such decree. The second clause of section 22 and the omission to specify in sections 21 and 22 decrees made before the Act came into force (which decrees had been carefully named in sections 19 and 20), together with the improbability that the Legislature forgot the case of *Ratansi Kalianji* ([a]) recently decided by a Full Bench of this Court, and which strongly illustrates the necessity of using distinct language when the Legislature has resolved on depriving judgment-creditors of their existing rights by retrospective legislation, fortify the conclusion which we have drawn from the second clause of section 22.

M. R. WESTROPP.

M. MELVILL.

F. D. MELVILL.

The 26th April 1880.

From A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay,—No. 426, dated Ahmednagar, the 16th June 1880. No. 89.

In paragraph 33 of my report No. 386, dated the 7th instant, I made allusion to the amount of work that had devolved upon the recently appointed Village Munsifs as far as the returns received by me up to date enabled me to do. These returns only covered the period up to the 30th April last. I have now received later information from some places, and I think it right to bring to the notice of Government, by way of an addendum to my report, that there has been a sudden, extraordinary, and unexpected influx of work into the Courts of the two Village Munsifs marginally noted. Though these gentlemen were appointed from the 1st February last, no suits were filed in their courts till the end of April; but after that period suits began to pour in in large numbers, and up to date some 300 suits have been instituted in these courts, most of which have been already disposed of. It thus happens that more suits have been filed in these two petty courts than in all the regular civil courts of the district put together. This is a somewhat noticeable fact, and shows that these petty courts are (as I anticipated in my report) likely to become popular and much resorted to. The suits to which I am alluding are for small sums, ranging between R2 and R10, and are, for the most part, against indigent weavers, who form a numerous class in Ahmednagar and Bhingar. In nearly every case the claim is admitted, and a decree is almost invariably passed for payment by small instalments of the amount found due. While it is satisfactory to notice that certain classes are alive to the advantages to be derived from the institution of Village Munsifs' Courts and ready to avail themselves of the justice administered therein free and gratis (*i.e.*, without any expense to the parties and without any expense, though at the same time without any advantage, to Government), it occurs to me to observe that this free use of these inexpensive tribunals is a thing quite apart from, and unconnected with, "the relief of the indebted agriculturists," which was the chief object of the Act that established these petty courts; and that the appointment of Village Munsifs for large and populous towns must have the effect of chiefly benefiting those classes for whom special relief was not expressly contemplated. It might be objected, too, that Government are put to unnecessary loss in the matter of court-fees; but the loss, if any, is probably infinitesimal, for, in my opinion, not one in fifty of the suits referred to in this report would have been instituted, had the payment of court-fees, process-fees, and the miscellaneous expenses incident to a suit in a regular Court, been compulsory. It is in petty cases of small value that the disproportion between the costs of a suit and the sum sued for is so excessive as to be practically deterrent.

Khan Saheb Makbul Ali, Village Munsif of Ahmednagar.

Mr. Narhar Jairam, Village Munsif of Bhingar, and three other villages in the vicinity of Ahmednagar.

Extract from the Proceedings of the Government of Bombay, in the Judicial Department,— No. 4974, dated the 22nd July 1880. No. 90.

READ—

Letter from the Acting Inspector General of Registration and Stamps, No. A.—893, dated 4th June 1880—Requests that the opinion of the Remembrancer of Legal Affairs may be obtained on certain points in connection with section 71 of Act XVII of 1879 and the rules framed under that Act.

Report by the Remembrancer of Legal Affairs, No. 739, dated 17th June 1880—Submits his opinion on the above.

Letter from the Remembrancer of Legal Affairs, No. 751, datd 19th July 1880.—Forwards, with reference to the correspondence ending with Government Resolution No. 2711, dated 17th April 1880, three

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([a]) Ind. L. R. 2, Bom., 148.

printed copies of the High Court's judgment holding that sections 20 and 21 of the Deccan Agriculturists' Relief Act have not retrospective effect. Observes that the High Court holds that only those sections of the Act have retrospective effect in which it is specially stated that they are to have such effect. States that the rule that a new enactment shall not affect rights already acquired when it becomes law is a very reasonable one, and it is not usual for the Legislature to provide otherwise, unless for weighty reasons; that, whether in respect of any of the provisions of the Deccan Agriculturists' Relief Act which are not expressly made retrospective in their operation, it is desirable for the Legislature now, by an amending Act, to give them retrospective effect, is a point upon which the Special Judge, who by this time has acquired an intimate knowledge of the working of the Act, will best be able to give an opinion. Adds that he has addressed Government in his report No. 739 of 17th June as to the necessity of some amendments in section 71 of the Act; and perhaps it might be advisable for Government to consult Dr. Pollen as to whether any other changes are needed, so that by one short amending Act all the weak points may be remedied before there has been time for them to cause much harm.

Letter from the Special Judge under Act XVII of 1879, No. 542, dated 12th July 1880—Submits, with reference to Government letter No. 4641, dated 9th July 1880, his views with regard to amendments in certain sections of the Deccan Agriculturists' Relief Act.

Letter from the Special Judge under Act XVII of 1879, No. 549, dated 13th July 1880—Forwards, in continuation of his letter No. 542, dated 12th July 1880, a letter from the Collector and District Registrar of Sholapur, and observes that there is a complete unanimity of opinion as to the difficulties which attend the working of section 71 of the Deccan Agriculturists' Relief Act and of the Rules in connection therewith, framed under section 61 of the same Act, and thinks that there can now be no doubt as to the urgency of, and an immediate consideration and settlement of, the question involved.

RESOLUTION.—The Legal Remembrancer, the Special Judge, and the Inspector General of Registration agree that section 71 of the Deccan Agriculturists' Relief Act requires amendment, and that Rules Nos. 18 and 19, framed under section 61 of the Act, require modifications and additions.

2. There is considerable discrepancy between the views held on the subject by the Legal Remembrancer and by the Special Judge.

3. The best solution of the difficulty appears to be to request the Legal Remembrancer to whom copies of Dr. Pollen's letters on the subject should be sent, to draft a section to take the place of section 71, and then, in consultation with the Inspector General of Registration and the Special Judge, to frame the rules which will be necessary in the event of the amended section being passed by the Government of India. This latter step appears desirable, as the rules in a matter of this kind are almost more important than the section.

4. Meanwhile the Special Judge should, with reference to his letter No. 514 of 5th July, be requested to follow the rules as they stand until they have been modified or superseded by Government. He should at the same time be informed that his addressing letters to the District Registrars couched in the terms of his Nos. 510 to 513 of 5th July 1880 displayed a singular want of judgment.

From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Officiating Secretary to the Government of India,—No. 6795, dated the 7th October 1880. No. 91.

In continuation of my letter No. 6757 of the 5th instant, I am directed to forward to you herewith copies of the papers* on which this Government Resolution No. 4974, dated the 22nd July last, was passed.

* Letter from the Acting Inspector General of Registration and Stamps, No. A.—893, dated 4th June 1880.
Report by the Remembrancer of Legal Affairs, No. 739, dated 17th June 1880.
Letter from the Remembrancer of Legal Affairs, No. 751, dated 19th June 1880.
Government letter No. 4641, dated 9th July 1880.
Letter from the Special Judge under Act XVII of 1879, No. 542, dated 12th July 1880.
Letter from the Special Judge under Act XVII of 1879, No. 549, dated 13th July 1880.

From Major A. B. PORTMAN, Acting Inspector General of Registration and Stamps, Bombay, to the Chief Secretary to the Government of Bombay, Judicial Department,—No. A.—893, dated the 4th June 1880. No. 92.

I have the honour to solicit the favour of your obtaining the opinion of the Remembrancer of Legal Affairs on the following points :—

(1) It being the apparent intention of Government that documents presented for registration under section 71 of Act XVII of 1879 should be entered in the books prescribed for village registration, whether such procedure is legal under the terms of the latter part of clause I of the above section.

(2) In the event of the above procedure not being legal, whether the above class of 'documents should be registered in the books prescribed for the registration of documents under Act III of 1877; and whether the

procedure laid down in the rules framed under that Act should be followed. If the documents in question should be entered in the books prescribed under Act XVII of 1879, the provisions of Rules 18, 19, and 20 appear to be insufficient.

(3) Section 71 lays down, amongst other things, that documents executed before Act XVII of 1879 comes into force be registered within one year from the date of introduction of the same. The Registration Chapter of the said Act not having come into force until the 1st of April last, whether such documents (*i.e.*, executed on and after the 1st of November 1879, up to 31st March 1880), should be presented for registration only up to 31st October 1880, or up to 31st March 1881. If they should be registered up to the latter date, an amendment to the concluding portion of paragraph 1 of section 71, and to Note 3, appearing above Rule 18 of the Code of Rules framed under the said Act, is necessary.

Report by J. R. NAYLOR, Esq., Remembrancer of Legal Affairs, Bombay,—No. 739, dated the 17th June 1880. No. 93

The first of the questions raised by Major Portman touches upon one of the difficulties felt by Mr. Filgate and myself when drafting the Registration Rules under the Deccan Agriculturists' Relief Act. The words "registered under that Act" in the last line but one of paragraph 1 of section 71 of the Act in question certainly seem to indicate that the registration of old instruments must be made in accordance with the provisions of the General Registration Act III of 1877. But the difficulty not only of providing kulkarnis with separate sets of registers and other records for registration under Act III of 1877 and Act XVII of 1879, respectively, but also of requiring them to learn simultaneously two wholly distinct procedures, was so great that it was thought practically impossible to arrange otherwise than that all registrations by Village Registrars should be made in the one set of books and under the one set of rules provided and framed under Act XVII of 1879. The only rules specially applicable to registrations under section 71 of that Act were included as Nos. 18, 19, and 20 in the rules framed under section 61 of the same. These the Acting Inspector-General of Registration states he finds to be insufficient for their purpose. If this is so, they can of course be added to; but Major Portman has not made any suggestions for their alteration.

2. An amendment of section 71 of Act XVII of 1879 is, as Major Portman points out, necessary in order to make it operate in respect of instruments executed before Village Registrars were first appointed (1st April 1870) instead of before the Act came into force (1st November 1879). When the Bill was under discussion it was probably contemplated that village registration would commence on the date of the Act coming into force, but the Bill was afterwards passed into law so suddenly that this was impossible. Hence it is now necessary to amend section 71 as above stated, and when this is being done the Government of India might be asked to take the opportunity of making such further alterations in the section as will remove the difficulty explained in the preceding paragraph.

From J. R. NAYLOR, Esq., Remembrancer of Legal Affairs, Bombay, to the Chief Secretary to the Government of Bombay, Judicial Department,—No. 751, dated the 19th June 1880. No. 94

With reference to the correspondence ending with Government Resolution No. 2711, dated 17th April 1880, I have the honour to forward herewith three printed copies of the High Court's judgment* holding that sections 20 and 21 of the Deccan Agriculturists' Relief Act have not retrospective effect. Although the judgment was delivered verbally, on the 26th April last, a printed copy of it has only recently been received.

2. It will be observed that the High Court holds that only those sections of the Act have retrospective effect in which it is specially stated that they are to have such effect.

3. The rule that a new enactment shall not affect rights already acquired when it becomes law is a very reasonable one, and it is not usual for the Legislature to provide otherwise, unless for weighty reasons. Whether in respect of any of the provisions of the Deccan Agriculturists' Relief Act, which are not expressly made retrospective in their operation, it is desirable for the Legislature now, by an amending Act, to give them retrospective effect, is a point upon which the Special Judge, who by this time has no doubt acquired an intimate knowledge of the working of the Act, will best be able to give an opinion. I have addressed Government in the Judicial Department, in my report No. 739, dated 17th instant, as to the necessity of some amendments in section 71 of the Act; and perhaps it might be advisable for Government to consult Dr. Pollen as to whether any other changes are needed, so that, by one short amending Act, all the weak points may be remedied before there has been time for them to cause much harm.

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* Printed at pages 233 – 234.

From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Special Judge under Act XVII of 1879, Ahmednagar,—No. 4641, dated the 9th July 1880. No. 95.

I am directed to forward to you the papers noted in the margin and to request that you will be so good as to favour Government with your views on the points mooted therein.

1. Letter from the Acting Inspector General of Registration and Stamps, No. A—893, dated 4th June 1880.
2. Report by the Remembrancer of Legal Affairs, No. 739, dated 17th June 1880.
3. Letter from the Remembrancer of Legal Affairs, No 751, dated 19th June 1880, with accompaniment.

2. I am to request the return of the original papers with your reply.

From A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, Ahmednagar, to the Secretary to the Government of Bombay, Judicial Department,—No. 542, dated the 12th July 1880. No. 96.

I have the honour to acknowledge the receipt of Government letter No. 4641, dated 9th instant, and, in returning the accompaniments received therewith, to state that I have already expressed my views rather fully on the subjects alluded to.

2. With regard to the provisions of section 71 of the Deccan Agriculturists' Relief Act and of the Rules Nos. 18 and 19 framed under section 61 of the said Act, I beg to refer to paragraphs 100 to 102 of my report No. 386 of the 7th ultimo, and also to my letter No. 514 of the 5th instant, forwarding, for the information of Government, a copy of a letter addressed by me to the District Registrars on the very subject now under reference.

3. I would again most strongly recommend the total repeal of section 71, and the Collectors whom I have consulted agree with me. I beg to forward, in original, the replies to my letter which I have received from three of the Collectors. I have not yet heard officially from the Collector of Sholapur, but I have had the opportunity of conferring with him personally, and he is quite sensible of the practical difficulties which beset the working of section 71, and would be glad to see it repealed.

4. The letters from the Inspector General of Registration and the Remembrancer of Legal Affairs (herewith returned), which accompanied the Government letter now under reply, seem to deal with only one aspect of the difficulties which present themselves. They fully admit the objections which I have already taken to section 71 and Rules 18—20; and they dwell chiefly on the impossibility of Village Registrars keeping a separate set of books for old deeds with all the formalities of the Registration Act. But it appears to me that the chief objection to section 71, coupled with Rules 18—20, seem to require that the executant should invariably himself be present in person and admit the execution of the instrument. But in those districts which have been overrun by famine, and in which a large percentage of the population has disappeared permanently or temporarily, it must happen that an immense proportion of the executants of *old* instruments are dead, or have left their villages, or cannot be found. Rules 18—20 make no provision for the appearance of executants through their legal representatives or through their agents; whereas the Registration Act provides for this: and here is one reason why the rules (even if they were legal) could not supply the place of the Registration Act. Again, even if the executant of an old instrument is present in his village, he having nothing to gain by attending, simply refuses to attend before the Village Registrar, and the village Registrar is then helpless; the rules do not give him any powers, but the Registration Act, Part VII, provides for enforcing the attendance of executants and witnesses. This is another reason why the rules could not supply the place of the Act. So far, then, the rules (granting them to be legal rules) are at fault; but the Registration Act would probably suffice for the due working of section 71, as was clearly intended in the section. But I now come to a case in which the section itself is at fault. Let us suppose that the executant, or, in case of his decease, his legal representative, appears before the Village Registrar either voluntarily or in obedience to compulsory process. When he appears, he is required to admit execution, or else the Village Registrar must refuse registration. But he has nothing to gain—on the contrary he has everything to lose by admitting execution. The transaction may have taken place years ago; he has received and spent the money, and now, by denying execution or pretending ignorance, he can effectually delay, and probably defeat, his creditor. He naturally, therefore, refuses to admit; and the creditor, if he wishes to persevere in asserting his rights, has to go through a tedious, expensive and cumbrous process. He has to apply to the Village Registrar for a copy of his reasons on stamped paper; he has then to appeal to the District Registrar (also on stamped paper), and he has then to await the result of a regular enquiry, involving further delay and expense, and after all, owing to the lapse of time, he perhaps finds it difficult or impossible to prove execution.

5. Besides the cases mentioned above, there is the class of cases—by no means uncommon in these districts—in which the executants of old deeds have become "paraganda," *i.e.*, have left their homes owing to scarcity or other cause. Section 71 is applicable to instruments executed by such persons; but neither the Registration Act nor the rules provide for the registration of such instruments. It would be unjust to confiscate such debts, and at the same time impossible to procure registration.

6. I may mention yet another class of difficulties attending the working of section 71. Many instruments, the registration of which is rendered compulsory by the section, are filed in *pending* suits—some of them proved, some awaiting proof; yet even these are not exempted from the application of the section, and hence suits have to be adjourned again and again, and sometimes plaints are withdrawn, liberty to bring fresh suits being granted to the plaintiffs. Again, many old documents are hidden away and buried in the records of decided suits, and are therefore difficult of access to the parties interested in getting them registered. They may have been proved and acted on in former suits, and yet, if they should require to be used again, their registration would seem to be compulsory.

7. To sum up my objections. Rules 18—20 appear to me to be superfluous, misleading, and illegal, and they prevent the proper working of section 71. If section 71 is to be retained at all in any shape, the duty of registering old instruments should be confined to Sub-Registrars, and should be taken away from the Village Registrars, who are incompetent and not provided with the requisite machinery. They have not copies of the Registration Act, nor of the proper books and forms. It would be better, however, to repeal section 71 *in toto*. It is doing, and will do, much harm, for, in consequence of its confiscatory tendency, it is attended with the worst evils of retrospective legislation. I cannot see that it will work any compensating good. The only justification that could be pleaded for it, so far as I can see, would be a well-founded belief in the existence of fabricated mortgage bonds on a large scale, and I am not aware of any grounds for such belief.

8. With reference to the decision of the High Court as to the non-retrospective effect of sections 21 and 22 of the Deccan Agriculturists' Relief Act, and the remarks of the Legal Remembrancer thereon, I have the honour to refer to paragraphs 85 and 86 of my report No. 386 of the 7th ultimo, and to my letter No. 399 of the 11th ultimo. In the same report and in subsequent letters I have discussed in detail all the practical difficulties in connection with the Act and the apparent defects and omissions which have been brought to my notice. Many of the points referred to seem to me to require very early attention, and I think that if my letters were placed with as little delay as possible in the hands of the Legal Remembrancer, with the orders and remarks of Government thereon, he would not find it difficult to draft a satisfactory amending Act for the consideration of the Government of India, and I shall be happy to render him all the assistance in my power. The amendment of sections 48 and 71 is especially urgent; and it would be a pity to lose the opportunity of correcting all the minor defects which exist in the Act.

From J. B. RICHEY, Esq., Acting Registrar and Collector of Poona, to the Special Judge under Act XVII of 1879, Ahmednagar,—No. 78, dated the 7th July 1880.

In acknowledging the receipt of your No. 510 of the 5th instant, I have the honour to intimate that my attention was drawn to the difficulties mentioned in your letter under reference, and you will see, from the extract appended, that I have already issued instructions on the points. Copy of these instructions is also appended.*

* Not printed.

Extract, paragraph 2, of letter No. 61, dated 29th May 1880, from the Registrar of Poona, to the Inspector General of Registration and Stamps.

Paragraph 2.—I have also received references in connection with the working of the provisions of section 71, and have replied that in registering deeds named therein the procedure laid down in Act III of 1877 should be followed. As, however, the Village Registrars are not supplied with the record necessary under Part XI of the Registration Act, they clearly cannot carry out registration under that Act, as anticipated by the Legislature; and for the present the registration of old documents must be conducted by the Sub-Registrars only.

From J. KING, Esq., District Registrar of Ahmednagar, to the Special Judge under Act XVII of 1879, Ahmednagar,—No. 42, dated the 8th July 1880.

I have the honour to acknowledge the receipt of your letter No. 511, dated the 3rd July 1880.

2. Some of the difficulties which beset the working of section 71 of the Deccan Agriculturists' Relief Act have been already brought to my notice; but I had not observed that rules drawn under section 61 to regulate the working of section 71 are "unnecessary, misleading, and *ultra vires*," though you clearly show that those terms can be appropriately applied to them.

3. The best remedy would be the entire repeal of section 71. If this cannot be looked for, the repeal of so much as gives Village Registrars the power to register old documents might be withdrawn.

4. If I were to carry out fully the suggestions contained in your last paragraph, I should have to supply 560 copies of the whole of Part VI, and of sections 41, 43, 45, 69, 75, 77, 88, and 89 of the Registration Act and of the fee table. The preparation of these in manuscript would be very laborious; and if the Village Registrars are not to be speedily relieved from the duties imposed by section 71, it would, I think, be expedient that copies should be printed and distributed from the Government Central Press, as I presume all the districts concerned are in the same position as regards this point. You will perhaps address Government on this point.

5. A notification might easily be published recommending persons to produce old documents for registration before the Sub-Registrars. I do not think that this will be much of a hardship to any one, as cases have occurred in which persons living in villages with a resident Village Registrar have deliberately petitioned to be attached for the purposes of registration to other villages, on the ground that they would like to get their deeds registered in the place where they have their business transactions; and this seems to show that registration at their own doors is not universally appreciated by the ryots.

6. To obviate any possible misconception or confusion, I enclose a draft Notification, and shall be glad if you will return it to me with such alterations and emendations as you may think expedient.

From T. H. STEWART, Esq., District Registrar of Satara, to the Special Judge under Act XVII of 1879, Ahmednagar,—No. 226, dated the 9th July 1880. No. 00.

With reference to your letter No. 513 of the 5th instant, I have the honour to inform you that the subject therein referred to has already attracted my notice, and I have represented it for instructions to the Inspector-General of Registration and Stamps. I entirely agree with you in thinking that the provisions of section 71 are cumbrous and prejudicial to the parties concerned. The course proposed in the last paragraph of your letter under reference has been recommended by me, and will be followed in this district on receipt of a reply from the Inspector-General on the subject.

From A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, Ahmednagar, to the Secretary to the Government of Bombay, Judicial Department,—No. 549, dated the 13th July 1880. N.o 101.

In continuation of my letter No. 542 of yesterday's date, I have the honour to forward a letter received by to-day's post from the Collector and District Registrar of Sholapur, which completes the replies to my letter Nos. 510 to 513 of 1880, a copy of which I forwarded on the 5th instant for the information of Government. It will be observed that there is a complete unanimity of opinion as to the difficulties which attend the working of section 71 of the Deccan Agriculturists' Relief Act, and of the rules in connection therewith framed under section 61 of the same Act, and I think that there can now be no doubt as to the urgency of an immediate consideration and settlement of the question involved.

From A. H. SPRY, Esq., Collector and District Magistrate, Sholapur, to the Special Judge under Act XVII of 1879, Ahmednagar,—No. 77, dated the 12th July 1880. No. 102.

I have the honour to acknowledge your letter No. 512, dated 5th instant, and to state that I have issued instructions according to the tenour of your sixth paragraph.

2. The difficulty about Village Registrars on certain occasions having to act as Sub-Registrars has already struck me, and I have addressed the Inspector General of Registration about it, as you will see from a copy of my letter No. 73, dated 25th ultimo, now appended.

From A. H. SPRY, Esq., Collector and District Registrar, Sholapur, to the Acting Inspector-General of Registration and Stamps, Bombay,—No. 73, dated the 25th June 1880.

I have the honour to acknowledge your letter No. 1022, dated 17th instant. As Village Registrars, under certain contingencies, become Sub-Registrars, and should, I presume, have then to conform to all the forms and rules laid down for those officers they will have to be provided with extra books, such as those mentioned in the margin. The registration of documents under any circumstances is a somewhat complicated proceeding, and if the Village Registrars, who are generally men of no great education, have to go through all the procedure of Sub-Registrars, I am afraid great confusion and injury to the public may arise. I would suggest that some simple rule for the guidance of Village Registrars in their capacity as Sub-Registrars be at once framed. It would much simplify matters if it was notified that the instruments referred to in section 71 of the Act (XVII of 1879) should only be registered by the ordinary Sub-Registrars of the taluka.

Book No. II, Minute Book; Bhata Book; Receipt Book.

Telegram from Home, Revenue, and Agricultural Department, Simla, to the Government of Bombay,—dated the 16th October 1880.

Bombay Government Resolution 5590, dated 14th August, regarding Deccan Agriculturists' Relief Act. Please send copy Legal Remembrancer's letter No 989, dated 6th August, and enclosures.

From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Officiating Secretary to the Government of India,—No. 7070, dated the 18th October 1880.

As requested in your telegram of the 16th instant, I am directed to forward to you herewith copy of the letter from the Remembrancer of Legal Affairs, No. 989, dated the 6th August 1880, and of its accompaniments.

From J. R. NAYLOR, Esq., Remembrancer of Legal Affairs, Bombay, to the Chief Secretary to the Government of Bombay,—No. 989, dated the 6th August 1880.

As directed in Government Resolution No. 4974, dated 22nd July 1880, I prepared a rough draft of a Bill to amend section 71 of the Deccan Agriculturists' Relief Act, and of some rules to supersede Nos. 18—20 of the present Village Registrar Rules and sent it to the Special Judge and the Inspector-General of Registration for the favour of their opinion and suggestions. I have now amended the draft in accordance with such of the suggestions received from the above two gentlemen as have my concurrence, and beg herewith to submit it as so amended for the orders of Government.

2. I also forward copies of the Special Judge's and Inspector-General of Registration's replies, with marginal notes, conveying my opinion upon the principal points on which we differ.

Draft Bill to amend Section 71 of the Deccan Agriculturists' Relief Act, 1879.

1. For section 71 of the said Act the following section shall be substituted, *viz.*:—

All mortgages executed before 1st April 1880 to be registered.

71. Every instrument executed before the 1st April 1880, and purporting to create any mortgage, lien, or charge of or upon any immoveable property belonging to an agriculturist shall be deemed to be an instrument required by section 17 of the Indian Registration Act, 1877, to be registered.

Any such instrument which before the said date was not so required to be registered may, notwithstanding anything contained in the said Indian Registration Act, 1877, be registered by the Village Registrar appointed for the area in which the agriculturist or any one of the agriculturists, to whom the immoveable property affected by the instrument belongs, resides, provided the same be duly presented for this purpose before the 1st April 1881. Such instruments shall be registered in accordance with such rules as may be prescribed in this behalf by the Inspector-General of Registration, with the previous sanction of the Local Government, under section 61 of this Act, and every instrument so registered shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877.

Nothing in this section applies to an instrument purporting to create a mortgage, lien, or charge in favour of the Government, or of any officer of the Government in his official capacity.

2. Every such instrument which, before the passing of this Act, has been registered by a Village Registrar in accordance with rules prescribed in this behalf by the Inspector-

General of Registration, with the previous sanction of the Local Government, shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877.

*Draft Rules to be substituted for Nos. 18 to 20 of those published in Government Notification No. 889A of 7th February 1880.** No. 108.

18. Instruments of the nature defined in section 71 may be presented for registration either by a party who claims thereunder, or by the executant, or one of the executants thereof.

19. If the executant or one or more of the executants of any such instrument do not appear before the Village Registrar at the time it is first presented for registration, the Village Registrar shall ascertain by inquiry whether it is probable that his or their presence, or the presence of any of the absent executants, can be secured on his allowing reasonable time for this purpose.

If the Village Registrar has reason to think that the presence of the absent executant, or of any of them, can be secured, he shall prepare a notice under his signature to the said executant or to each of the said executants desiring his attendance on a day to be named therein, which shall not be more than one month from the date of the notice, and shall give such notice or notices to the person who presented the instrument for registration for the purpose of being delivered by him to the executant or executants to whom they are respectively addressed.

On the day so fixed, or if the executant or all the executants are present on the day on which the instrument is first presented for registration, or if the Village Registrar shall not think it probable that the presence of the executant, or of the absent executant or executants can be secured, then, on the day on which the same is presented for registration, or as soon thereafter as may be, the Village Registrar shall proceed to inquire as to the identity of the executant or executants, if any, present, and, if satisfied thereof, shall ascertain whether execution of the instrument and receipt of the consideration, or of any part of the consideration, named therein, is admitted by such executant or executants.

20. No instrument presented for registration under Rule 18 shall be refused registration, but all the circumstances attending the registration shall be endorsed thereon by the Village Registrar in the following order:—

(*a*) The first endorsement should be a note of the presentation as follows:—

"This instrument is presented for registration by Q. R. of S. T., the party (*or* one of the parties) claiming under it (*or* by A. B. of C. D., the executant [*or* one of the executants] this day of 188)."

This endorsement should be signed by the Village Registrar.

(*b*) On the day on which the instrument is registered, the Village Registrar should add the following endorsement:—

"The following alleged parties to this instrument are absent, *viz*:—

The rest, *viz.*—

are present (*or* all the alleged parties to this instrument are present).

(*c*) If the executant, or one or more of the executants, is or are present, a note should next be inserted as follows:—

"A. B. of C. D. (and E. F. of G. H., etc.), whom I, the Village Registrar, know (*or* of whose identity I, the Village Registrar, have satisfied myself) admits (*or* admit) the execution of the instrument which has been read aloud to him (*or* them) by me and acknowledges (*or* acknowledge) having received R (*words and figures*) of the consideration-money (*or* of the following articles):—

To this endorsement, which must be varied according to circumstances, the executant or executants present should then affix their signatures or marks.

(*d*) If witnesses as to the identity of any executant be examined by the Village Registrar, each such witness should next attach his signature or mark to an endorsement in the following form:—

"Witness as to the identity of the above A. B. of C. D. V. W. of. X. Y."

* Printed in the *Bombay Government Gazette* of the 12th February 1880, pages 149–158.

(*e*) The Village Registrar should next write the fee endorsement as follows:—

"Fee received for registration, 4 annas."

(*f*) Next below such endorsement should follow the words:—

Registration—Ordered.

The Village Registrar should then affix his signature, with the date of such signature, at the foot of these endorsements.

(*g*) When the instrument has been copied in the Registration Book, the Village Registrar should add a further note showing the page and volume of the Book in which the instrument has been so registered. Finally, at the foot of all these endorsements the Village Registrar's signature should be once more attached with his official designation and the date of such signature.

20. When the immoveable property or any part of the immoveable property affected by any instrument registered under Rule 20 is not situated within the local area for which the Village Registrar who registers such instrument has been appointed, he shall forward a memorandum in the form of Schedule B to the Village Registrar, if any, of the local area in which such property, or of each local area in which any part of the property, is situated.

Village Registrars who register any such instrument in the discharge of concurrent functions under clause (*b*), section 55 of the Act, should send a memorandum in the said form to the Village Registrar for whose local area he exercises such functions, and also to the Village Registrar of each local area in which any part of the property affected by the instrument is situated.

No. 109. From A. D. POLLEN, Esq., LL.D., Special Judge under Act XVII of 1879, Ahmednagar, to the Remembrancer of Legal Affairs, Bombay,—No. 615, dated the 2nd August 1880.

I have the honour to acknowledge your letter No. 960 of the 31st ultimo, enclosing your proposals for amending section 71 of the Deccan Agriculturists' Relief Act, and Nos. 18-20 of the Village Registrars' Rules.

2. You are aware that I have urged the total repeal of section 71; and of course, if the section were repealed, there would be no need of any rule. In my letters to Government I have set forth most of my reasons for desiring the repeal of the section, and I need only add now that, as the instruments thereby affected must necessarily involve sums of petty amount always less than R100, the expenses, delays, and difficulties attending the registration of such instruments will generally be out of all proportion to the amounts secured thereby. The arguments against the compulsory registration of old instruments seem to me to considerably outweigh the only argument adduced in its favour, namely, that it will prevent false antedated bonds being hereafter brought forward—a contingency which is merely conjectural, and which should not lightly be allowed to justify retrospective legislation.

3. The proposed section, together with the new rules drafted by you, will certainly remove many of the objections hitherto raised by me and others: but I would point out that by them the whole nature and character of the registration scheme will be essentially changed, and nothing but the mere name of registration will remain. Your proposals amount to this,—that instruments of the nature referred to *must be* registered if presented, whether the executants are present or absent, whether they admit or deny execution, and whether they admit or deny receipt of consideration. This certainly is a very simple method, and it cuts the knot effectually; but it is a very different thing from the process of registration as hitherto understood. One of the principal objects of the Registration law now in force is, as it seems to me, to secure and record the admission of the executant at or about the time of execution, when he has no motive and no wish to repudiate, and then, in case he does repudiate, to provide for a regular judicial enquiry as to the fact of execution. "Registration" (in this sense) has no meaning as applied to *old* bonds; and to go through the ceremony of inviting a debtor to be at the pains of coming forward to admit a State liability appears to me a delusion, and this has been one of my chief objections to section 71 as it stands. If, however, your proposal is accepted and approved, things will be much simplified, and I would then only ask what necessity can there be in that case for an elaborate new section and an equally elaborate set of new rules. Would it not be sufficient, once for all, to enact in a few words that "(*a*) every such instrument shall be null and void unless presented (within a certain date) to a Village Registrar, to be certified and authenticated by him."

(*a*) Were the question now to be settled for the first time, I should be inclined to support a simple provision of this kind; but the Government of India will probably prefer that the form of section 71 should be adhered to as much as possible.

J. R. N.

4. With regard to the wording of your draft section, I think it would be advisable to make the situation (*b*) of the property, instead of the residence of the agriculturists, the test for determining the proper office for registration. The definition of the terms "agriculturist" and "reside" has led to much confusion. I would also remark that the draft section omits (*c*) to specify any limit of time within which old instruments may be presented for registration. I think the limit should be one year from the date on which the rules referred to in the section come into force. I also think that, for consistency's sake, if new rules are to be made, they should be expressed to be made under section 71 (*d*) itself and not under section 61. I think, too, that the words "shall (*e*) be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877," should, if possible, be avoided, seeing that the intended registration will vary so essentially from that contemplated by the Act, not only as to the time, but as to the manner and condition of registration.

(*b*) See my note (*a*) on the Inspector General of Registration's letter.

J. R. N.

(*c*) This omission I have corrected; but I agree with the Inspector General of Registration that the time should be limited to 1st April 1881, *i.e.*, one year from the date on which Village Registrars were first appointed.

J. R. N.

(*d*) I think it is better that the rules relating to Village Registrars should be made under one section. Section 61 already authorizes rules for regulating their procedure, so that a reference to it suffices.

J. R. N.

(*e*) I retain the form to which Dr. Pollen objects, for the reason given above in note (*a*).

J. R. N.

5. I now proceed to offer a few remarks on the draft Rules intended to replace the present Rules Nos. 18 to 20. Having regard to the fact that many of the Village Registrars are men of little education and intelligence, to whom even the existing rules are, in a great measure, a puzzle, I think that any new rules cannot be made too short and simple. It seems to me that the rules are more complicated and the endorsements more numerous than need be. If a Village Registrar is bound to register every instrument presented to him, whether the executant be present or absent, whether he admit or deny, I do not see why in certain cases an attempt should be made to secure the presence of the executant, or why there should be any pretence of making an enquiry as to identity, etc. If the only object is to prevent bonds from being forged and antedated in the future, that object will be sufficiently attained by requiring the immediate production and authentication of existing bonds (genuine or forged). Nothing that I can see will be gained by making the Village Registrars examine the executants in certain cases (namely, in the cases where they can be induced to attend) and enquire into their identity, seeing that in other cases no such examination or enquiry will be necessary. When the question of the genuineness of a bond comes to be tried in a Civil Court, the absence or the presence of the executant before the Village Registrar would not, and ought not to, affect the result; the absent and the present would stand in the same position; and a plaintiff, if he proved his case, would be as much entitled to a decree against a debtor who denied as against one who admitted execution of the bond before the Registrar. I very much doubt, therefore, whether the device of endorsing on the instrument all the circumstances under which it is admitted to registration will be productive of any good effect, even if the agency employed be intelligent and full trustworthy. It might then be possible to simplify the rules in this respect and to provide merely for the identification and authentication of the instrument itself. (*f*)

(*f*) I have above said, I would be inclined to agree with these remarks if the registration of these itnstruments were now about to be directed for the first time; but as a large proportion of the instruments must already have been presented for registration, I do not think that any greater change in the procedure should be made than experience proves necessary. The draft rules, as they stand, will scure the objects of registration as far as possible. When circumstances render nothing more than a mere authentication of the instrument feasible, the registration must be limited to that.

J. R. N.

6. Throughout the draft rules, the word "executant" is used, but nothing is said about the legal representative (*g*) of the executant which seems to be an omission; nor is any provision made enabling the person claiming or the executant to appear by an agent (*h*), which is also necessary. Rule 19 provides for notices being delivered in certain circumstances to the creditor to be served by him on the debtor; but in the case of forged or fraudulent deeds it is not likely that the creditor would take much trouble in warning his victim. I do not think it should be left to the discretion of men like Village Registrars to judge whether notices should or should not be issued. The delay, moreover, in issuing notices

(*g*) Agreeing with Dr. Pollen that the "rules cannot be made too short and simple," I do not think it expedient to burden them with provisions about legal representatives. If the original executant is dead, he cannot of course appear, and registration must take place in his absence. Village Registrars cannot be expected to be able to know whom to recognize as his legal representative.

J. R. N.

(*h*) If the Inspector General of Registration thinks it necessary, agents of persons claiming under instruments might be permitted to present instruments for registration on production of a power-of-attorney.

J. R. N.

would needlessly harass the creditor. With regard to the endorsement (*c*) in Rule 20, I notice that it is to be varied according to circumstances; but the Village Registrars, I fear, will not understand this. The most usual endorsement, in cases where the executant or his legal representative is induced to appear will, I am greatly afraid, have to be "the executant A. B. denies execution, or A. B., the legal representative of the executant, says that, he knows nothing about execution. I regret to have to record my impression that the draft rules as they stand will only add to the confusion that at present exists; and I am still most strongly of opinion that the best and safest and wisest way out of the difficulty will be to repeal section 71; and I hope that Government, after considering the reasons I have already urged, and also bearing in mind the expense, delay, and anxiety likely to be occasioned to hundreds of innocent holders of honest bonds, will see their way to recommending its total repeal to the Government of India. If this course be disapproved, I can only suggest two other alternatives. One is that the registration of old instruments be entrusted entirely to the Sub-Registrar; and the other is to enact the compulsory production of such instruments within a certain date for authentication and attestation by the Village Registrars, for which purpose a short section and a few very simple rules would suffice. It seems to me, however, that it would be inadvisable to attempt to mould the new section and rules into final shape until Government decide deliberately and definitely on the principle to be adopted.

7. (*i*). I omitted to mention above that in my opinion some provision should be made in the amending section to exempt instruments which are already filed or presented in pending suits, and also instruments which have been previously proved from the operation of the sections. A saving clause might also be introduced to meet the cases of persons who may have been prevented by any sufficient cause from tendering their documents for registration within the prescribed time.

(*i*) I am unbale to concur in any of the suggestions in this paragraph. No exception could be allowed to the rule requiring registration of old instruments without opening the door to great disputes. If the object of an instrument has already been attained, the parties claiming under it will, of course, not trouble to get it registered, but if it has still to operate, there will be no real difficulty in getting it registered, even though it may be necessary occasionally to apply to a Court to get it temporarily returned to the owner for this purpose.

J. R. N.

8. The Deccan Agriculturists' Relief Act seems to me to require amendment in other minor respects, and I hope that the opportunity will be taken of considering the subject as a whole.

9. I beg to return the draft Bill and Rules in case you may require them.

No. 110. From Major A. B. PORTMAN, Acting Inspector General of Registration and Stamps, Bombay, to the Remembrancer of Legal Affairs, Bombay,—No. 1296, dated the 3rd August 1880.

I have the honour to acknowledge your letter No. 959 of 1880, forwarding a draft Bill to amend section 71 of the Deccan Agriculturists' Relief Act and draft Rules to replace Nos. 18 to 20 of the present Village Registrar's Rules for my early opinion and suggestions. I have carefully read the same and would beg to suggest the following alterations:—

Draft Bill, paragraph 2.—Any such instrument which before the said date was not so required to be registered may, notwithstanding anything contained in the said Indian Registration Act, 1877, be registered *by the Taluka Village Registrar or by the Village Registrar of the village in which the property affected by the instrument is situated, within one year from the 1st April 1880*, and under such rules, etc.

The words italicized are those which I would propose to be substituted in lieu of those commencing in your draft * * * "by the Village Registrar appointed for the area" * * * * and ending * * "any one of such agriculturists resides." This would do away with the questions (*a*) of residence which might arise, and has arisen if the executant was at the time residing in a village different from that in which the property affected by the instrument is situated, and there is no doubt that the proper officer to register such instrument is the Village Registrar above mentioned or the Taluka Village (*b*) Registrar who has concurrent jurisdiction. In all other points I think your draft meets the requirements of the case.

(*a*) There is much force in what the Inspector General of Registration and the Special Judge (*vide* paragraph 4 of his letter) say on this question of residence. But so long as section 57 makes the residence of the agriculturist the test of the proper office for the execution of an instrument to which he is a party, it will be most convenient, I think, for the same rule to be applied as regards registration under section 71. Moreover, as the Act is for the relief of agriculturists residing within the four Deccan Districts, it seems appropriate that its provisions should apply to them personally, whether or not their property, or a part of their property be situated without those districts.

J. R. N.

(*b*) As Taluka Village Registrars have concurrent jurisdiction, it is not necessary that they should be specially mentioned in the draft section, as the Inspector General of Registration proposes.

J. R. N.

2. With regard to the rules, I beg to append a draft of Rule 19 as, in my opinion, it should be. It appears to me that in your Rule 19 you have given too much power into the hands of the Village Registrar and the claimant under the instrument, which might open the door to a great deal of fraud and render alterations in documents, and possibly the execution of new ones, easy. I have, therefore, to prevent this as far as possible, in the absence of the executants, introduced the Police Patel (*c*) as the agent to assist in the enquiry and to serve the notices on the executants, so that in case of enquiry by a Court, the Police Patel's evidence would be available to show that the Village Registrar, in accordance with the rules, tried his best to obtain the presence of the executant or executants; moreover, the Police Patel and the Village Police ought to be able to give better information than any one else as to the whereabouts of the parties concerned.

(*c*) I fear that this proposed reference to the Police Patels of other villages, sometimes, perhaps, very distant, would be impracticable. It will always be an advantage to the party claiming under an instrument to secure the presence of the executant, if he can, and to obtain his acknowledgment of the instrument before the Village Registrar. Hence I think, it may safely be left to him to deliver the notice. If he does not do so, and the instrument is registered in the absence of the executant, he will gain nothing beyond establishing the fact of the existence of the instrument at the date of its registration, and the alleged executant will not be in any way injured by the mere registration.

J. R. N.

3. The remainder of the rules drawn up by you appear to be sufficient in every particular, and are approved of by me, but I have added a short Rule 20A (*d*) to meet the consequence of an instrument being registered by the Taluka Village Registrar, which, I think, you will agree with me, is necessary.

(*d*) I concur in this suggestion, and have added Major Portman's proposed rule to mine in a somewhat modified form.

J. R. N.

4. In conclusion, I beg to inform you that I forwarded, with a letter, No. 1148 of 10th July 1880, to the Secretary to Government, Judicial Department, another set of references regarding the Deccan Agriculturists' Relief Act, which ought by this time to have reached you, and I would suggest that if, in consequence of these references, you may see fit to recommend to Government certain further alterations in the Act or Rules, they should be embodied in one with the present draft, to prevent further delay and unnecessary difficulties with the Village Registrars.

Major Portman's Proposed Substitution of Rule 19.

19. If the executant or, where there are more than one, all the executants of any such instrument, do not appear before the Village Registrar at the time it is first presented, the Village Registrar shall ascertain by enquiry through the Police Patel of the village whether it is probable that the presence of the absent executant, or of any of the absent executants can be secured on his allowing reasonable time for this purpose.

If from such enquiry the Village Registrar has reason to think that the presence of the absent executant or, where there are more than one, of any of them can be secured, he shall prepare a notice under his signature to the said executant, or to each of the said executants, desiring his or her attendance on a day to be named therein which shall not be more than one month from the date of the notice, and shall hand over such notice or notices to the Police Patel of the village to which such executant or executants belong for the purpose of being delivered by him through the Village Police to such executant or executants.

20A. In case of such instruments being registered by the Taluka Village Registrar, that officer should forward a memorandum as per Form, Appendix B, to the Village Registrar of the village in which the property affected by the instrument is situated.

From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Officiating Secretary to the Government of India,—No. 6713, dated the 2nd October 1880. **No. 111.**

I am directed to forward, for submission to the Government of India, copies of the papers noted in the margin, regarding the question of the legality of the appointment as Conciliators under the Deccan Agriculturists' Relief Act, 1879, of persons holding the office of Police Patel.

Letter from the Special Judge under Act XVII of 1879, No. 702, dated 24th August 1880.
* Memorandum from the Collector of Ahmednagar, No. 5038, dated 30th August 1880.
* Memorandum from the Commissioner, Central Division, No. 2998 R., dated 11th September 1880.
Report by the Remembrancer of Legal Affairs, No. 1184, dated 21st September 1880.

* Not printed.

2. Shortly stated, the question is whether a Police Patel is "an officer of police" within the meaning of the Deccan Agriculturists' Relief Act.

3. In forwarding the above papers, I am desired to state that His Excellency in Council is not aware of any reasons for disqualifying a Police Patel for appointment as Conciliator,

which would not apply equally to a Revenue Patel or a Kulkarni: all three have certain powers of annoyance, but the Police Patel has probably the least of the three.

4. In a very great number of villages one man is both Revenue and Police Patel, and in every taluka there are probably two or three Police or Police and Revenue Patels, who, if eligible, would make good Conciliators, and as the supply of Conciliators is by no means equal to the demand, it is not desirable unnecessarily to restrict the choice.

5. Patels when sufficiently intelligent make very good Conciliators; they have the village Mhars at their service to collect the parties and their witnesses, and the Kulkarni to draw up their decision, besides which they are in many cases the persons to whom the villagers would naturally refer a disputed question.

6. For the above reasons, I am desired to request that, as supplementary to the amendments of Act XVII of 1879, proposed in the draft Bill submitted to the Government of India with the letter from this Office, No. 6299, dated the 14th ultimo, the Government of India may be moved to cause it to be made clear that Police Patels are not ineligible for appointment as Conciliators.

No. 112. From A. D. POLLEN, Esq, LL.D., Special Judge under Act XVII of 1879, Ahmednagar, to the Chief Secretary to the Government of Bombay,—No. 702, dated the 24th August 1880.

It was lately brought to my notice that the Police Patel of a village in the Kopargaon Taluka has been appointed Conciliator, and as I doubted the legality of the appointment having regard to the language of section 38 of the Deccan Agriculturists' Relief Act, I represented the matter to the Collector of Ahmednagar that he might report it to Government if necessary.

2. I have since observed that several of the Conciliators in other districts also hold the office of the Police Patel conjointly with that of Revenue Patel. It would be inexpedient to disturb the existing arrangements if it could be avoided. I have, therefore, the honour to suggest that, if considered desirable, a legal opinion should be obtained as to whether the words "an officer of police," as used in section 38 of the Deccan Agriculturists' Relief Act must be taken to include a Police Patel appointed under Bombay Act VIII of 1867. I notice that in the first section of the last-named Act the words "police officer" (when used in the Act) mean a police officer as constituted under the Bombay District Police Act (VII) of 1867. If it be held illegal to appoint a Police Patel, I would suggest the advisability of amending section 38 by inserting the word "District" before the word "Police" when the Act comes up for amendment.

No. 113. Report by J. R. NAYLOR, Esq., Remembrancer of Legal Affairs, Bombay,— No. 1184, dated the 21st September 1880.

The Remembrancer of Legal Affairs has the honour to refer to paragraph 17 of Government Resolution No. 549, dated 26th January 1880, in which it was held that Police Patels must be reckoned as police officers, and their names omitted from the lists of gentlemen to be appointed Conciliators. The words "officer of police," used as they are in section 38 of the Deccan Agriculturists' Relief Act in their ordinary sense, no doubt include Police Patels, and looking to the very strong opposition that was at first shown in the Legislative Council of the Governor General to the appointment of any Government officer whatever, to be a Conciliator, I do not think that it is expedient at this early period of the operation of the Act to propose to the Government of India so material an alteration in it as would be involved in the adoption of the Special Judge's suggestion for amending section 38.

No. 114. From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Officiating Secretary to the Government of India,—No. 7429, dated the 5th November 1880.

With reference to the letter from this Government, No. 6299, dated the 14th September last, submitting a draft Bill to amend the Deccan Agriculturists' Relief Act, 1879, I am directed to forward herewith copy of the correspondence noted in the margin, and to request that the Government of India may be moved to add to the draft Bill the further amendment proposed by the Acting Remembrancer of Legal Affairs in his letter No. 1340, dated the 30th ultimo, and which is approved by this Government.

Letter from the Acting Inspector General of Registration and Stamps, No. 1681, dated 19th October 1880.
Government letter No. M.—58, dated 29th October 1880.
Letter from the Acting Remembrancer of Legal Affairs, No. 1340, dated 30th October 1880.

From Major A. B. PORTMAN, Acting Inspector General of Registration and Stamps, Bombay, to the Chief Secretary to the Government of Bombay, Judicial Department,—No. 1681, dated the 19th October 1880. No. 115.

I have the honour to bring to the notice of Government that the period of one year during which instruments under section 71 of the Deccan Agriculturists' Relief Act are to be registered will expire on the 31st of the current month, the Act having come into force on the 1st November 1879. As, however, the registration portion of the Act did not come into force until the 1st April 1880, it was suggested by me, and has been, I believe, recommended amongst other changes in the Act that the period above referred to should be extended to the 31st March 1881. I venture, therefore, respectfully to suggest that the Government of India may be moved to notify this extension of time in the *Gazette* at as early a date as possible, in order that all those concerned may be made aware of the fact, otherwise, as a considerable number of such documents have hitherto been held back, much confusion in registering them is likely to ensue.

From C. G. W. MACPHERSON, Esq., C.I.E., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Acting Remembrancer of Legal Affairs, Bombay,—No. M.—58, dated the 29th October 1880. No. 116.

With reference to Government Resolution No. 6279, dated the 14th September last, and previous correspondence in your office, I am directed by His Excellency the Governor in Council to forward to you, for the favour of your opinion, the accompanying copy of a letter from the Acting Inspector General of Registration and Stamps, No. 1681, dated the 19th instant, suggesting the issue of a Notification by the Government of India extending up to 31st March next the period during which instruments under section 71 of the Dekkhan Agriculturists' Relief Act can be registered.

I am at the same time to state that, from a telegraphic communication received from the Government of India, it appears that the amendments proposed in the above Act cannot be passed into law until the Government of India re-assemble at Calcutta.

In the opinion of His Excellency the Governor in Council the difficulty pointed out by Major Portman requires legislation, and a Notification in the *Gazette of India*, such as that proposed by him, appears to be of no practical use.

I am therefore directed to request you will be so good as to favour Government with your opinion on the latter point, as also with your advice generally in the matter.

From E. CORDEAUX, Esq., Acting Remembrancer of Legal Affairs, Bombay, to the Acting Under Secretary to the Government of Bombay, Judicial Department,—No. 1340, dated the 30th October 1880. No. 117.

In reply to your letter No. M.—58 of 29th October 1880, I have the honour to state that it would serve no purpose to notify an extension of the period to the 31st March 1881, and that the only possible way, in my opinion, in which the difficulty which Major Portman anticipates can be avoided or lessened, is as follows.

2. According to the present unamended law the Dekkhan Agriculturists' Relief Act, 1879, no Village Registrar can register instruments referred to in section 71 of that Act presented for registration after to-day; and such instruments will, for all purposes, be null and void, until the power of registering them is revived by the amendment of the Act under which all such instruments may be presented up to 1st April 1881. I understand from Major Portman's remarks that "a considerable number of such documents have hitherto been held back, and much confusion in registering them is likely to ensue;" that the difficulty he anticipates is the pressure of work that will be thrown on the Village Registrars in consequence of a great number of instruments being presented for registration within the possibly very limited period between the passing of the Amendment Act and the 1st April 1881.

3. It is also plain that the persons who wish to register the instruments referred to will be deprived of so much of the time as elapses between 1st November and the passing of the Amendment Act.

4. To obviate either inconvenience, I would suggest the following amendment of section 12 of the draft Amendment Bill of the Deccan Agriculturists' Relief Act, which was submitted to Government by Mr. Naylor, and forwarded to the Government of India in accordance with Government Resolution No. 6297 of 14th September 1880, in which the necessity of the Bill becoming law by the 1st November at the latest was pointed out.

In section 12, for "before the 1st April 1881" substitute the following:—

"Within one year from the 1st April 1881, provided that in computing the period of one year, the period elapsing between the 1st November 1880 and the date of the passing of the present Act shall be excluded."

Should His Excellency the Governor in Council approve of this suggestion, I would strongly advise an early submission of the matter to the Government of India.

No. 118. Home Department Office Memorandum No. 222, dated Fort William, the 9th February 1881.

In forwarding to the Legislative Department the letters marginally noted from the Government of Bombay on the subject of a draft Bill prepared by Mr. J. R. Naylor, the Remembrancer of Legal Affairs, Bombay, to amend the Deccan Agriculturists' Relief Act, 1879, the undersigned is directed to communicate the following remarks on the provisions of the Bill.

No. 6299, dated the 14th September 1880.
No. 6757, dated the 5th October 1880.
No. 6795, dated the 7th October 1880.
No. 7070, dated the 18th October 1880.
No. 7429, dated the 5th November 1880.

2. This section proposes to repeal the last fourteen words of section 2 of the Act. This Department agrees to the repeal of these words.

Section 1 of the Bill.

3. The next amendments, following the order of the Bill, are those proposed in sections 3, 11, 12, and 16 of the Act, and with them it may be convenient to consider the amendment proposed (section 14 of the Bill) in section 72. This latter section, as it stands, applies in every case in which the defendant at the time of institution of a suit is an agriculturist, which might, in some cases in which the defendant had become an agriculturist very shortly before the institution of a suit, lead to anomalous results. It might, for instance, revive a cause of action which had already become barred. This Department therefore recommends the adoption, in substance, of the amendment of section 72 as proposed. The amendments suggested in sections 3, 11, 12, and 16 do not commend themselves to this Department. It is doubtless true that these sections, as they stand, apply to the case of any person who is an agriculturist at the time proceedings are instituted, and that accordingly, in some exceptional cases, when such person had become an agriculturist shortly before the institution of proceedings, they would extendthe relief to transactions to which it ought not, strictly speaking, to be extended. It is further possible to suggest devices by which, under these sections, persons, for whose benefit the Act was not intended, could bring themselves within its provisions; but similar anomalies would arise, and similar devices might be resorted to, under these sections even if they were amended in the manner proposed by Mr. Naylor. There would be an additional disadvantage in adopting Mr. Naylor's amendments, inasmuch as, in so far as they made any change in the law, their tendency would be to extend the relief to persons who have ceased to be agriculturists, and deny it to persons who are agriculturists. In short, these sections, as they stand, are more in accordance with the whole scheme of the Bill than they would be if Mr. Naylor's amendments were adopted. Amendments might be suggested which would, in cases when a change in the status of a person had taken place, provide for the separation of his transactions as an agriculturist from those which had taken place when he was not an agriculturist; but any attempt to frame provisions of this sort would in effect lead to endless refinements and complications. The Bill is a rough and ready one, and must be accepted as such; but the principle that relief is to be granted to a person when he is an agriculturist at the time proceedings are instituted and not otherwise should be strictly adhered to. The only practical amendment which suggests itself to this Department, with a view of diminishing the change of anomalies arising under these sections, is to confine the relief to persons who have been agriculturists for, say, three years before they come before the Çourt, and a suggestion in this sense will be made to the Government of Bombay when the revised Bill is sent for opinion.

Sections 2 to 5 and section 14 of the Bill.

4. The amendment of section 19 of the Act, as proposed in this section, does not commend itself to this Department. In the first place, it seems wrong to confine the attention of the Judge to judgment-debts. *All* debts must be considered, inasmuch as if all the debts taken together amount to ₨50, the second clause of the section will apply. Again, the amendment proposed is open to objection in so far as it authorizes the Judge to deal with any debt other than the debt due under the particular decree which he has before him. The clause must be confined to

Section 6 of the Bill.

the settlement of that particular debt; but if it is so confined, there does not seem to be any objection to its being extended to cases in which it appears to the Judge that, though there are other debts, they do not, together with that particular debt, amount to R50, and that accordingly action cannot be taken under the second clause.

Section 7 of the Bill.

5. This section amends section 47 of the Act. The Government of Bombay, however, consider that section 47 should remain as it is. This section of the Bill should, therefore, be omitted.

Section 8 of the Bill.

6. The amendment which it is proposed by this section to make in section 48 of the Act is clearly right.

Sections 9 and 10 of the Bill.

7. The amendments proposed in these sections are recommended for adoption.

Section 11 of the Bill.

8. As regards the new sections 63A. and 63B., which it is proposed by this section to introduce into the Act, this Department considers it undesirable to multiply penal provisions unnecessarily, and accordingly recommends their omission.

Section 12 of the Bill.

9. Whether the amendments in section 71 of the Act, which it is proposed to make in this section, will be improvements, seems to this Department to be doubtful. It appears that the Bombay Government in the action taken with reference to section 71 have not only misconstrued that section, but have failed to perceive that the procedure for the registration of a document executed away from the Registrar's Office must be a matter not only entirely different from, but also much more complicated than, the registration, coupled with execution provided for by Chapter VIII of the Act.

Section 71 of the Act, as it now stands, clearly provides for existing instruments being registered under the Registration Act, 1877, and this provision is retained in the new section 71 proposed by the Bill; but the Bill further provides that such instruments are to be registered in accordance with rules prescribed by the Inspector General of Registration, with the previous sanction of the Local Government, and from the draft of the rules submitted it will be seen that the registration therein provided for is not a registration of the kind provided for in the Indian Registration Act but something so very different that any reference to that Act in connection with it would be wholly out of place.

The rules provide that any of these old instruments brought to the Registrar within the appointed time by any party to it shall be registered, though the other parties to it cannot be found, or refuse to appear, or declare their signatures to be forgeries. In other words, the proposed system contents itself with securing that every instrument, which it may be necessary at a later stage to put before a Court, shall at an early date be marked by the Registrar, so that the Court may be assured that it was not fabricated *after* that date. This object may be worth attaining; but as Mr. Pollen (the Special Judge) urges in his letter, there is no need, in order to attain it, to bring upon all concerned the trouble, delay, and expense involved in summoning all the parties to the instrument as the rules require. The parties to whom summonses are issued would doubtless in some cases be found, and would appear and admit execution and receipt of consideration, but when it became known that the rules did not provide (as the Registration Act provides) for any ulterior proceedings in the event of their non-appearance the probability is that they would in a great majority of cases either stay away, or, if they appeared, deny execution. If it suffices to have these old instruments marked by the Registrar before a certain date, the simple course, as Mr. Pollen suggests, is to provide that no such instrument shall be admissible in evidence, unless it is before a certain date produced before the Registrar and marked in some prescribed manner by him.

Mr. Naylor, who has framed the rules, says that, if the question were now to be settled for the first time, he would be inclined to support this suggestion; but he adds: "The Government of India will probably prefer that the form of section 71 should be adhered to as much as possible." This section, however, was drawn in its present terms because it was understood that there would be no difficulty in affecting the registration of these old instruments under the Indian Registration Act before the Village Registrars acting as Sub-Registrars under that Act; but as it is found impracticable to do so, and as the Bombay Government propose to limit themselves to the smaller scheme of insisting upon those instruments being marked by the Registrar before a certain date, the proper course appears to this Department to be to annul the section altogether and to frame a new one suited to the new purpose.

Section 13 of the Bill.

10. In regard to the provision made in this section, this Department is of opinion that it will be necessary to enact some such validating clause even in the event of section 71 of the Act being re-enacted as suggested in the preceding paragraph.

Section 15 of the Bill.

11. The new section 73 proposed in this section goes, in the opinion of this Department, too far. It is probably intended to provide only, or chiefly, for the finality of decisions by Conciliators and Registrars; but these functionaries would be quite incapable in some cases of deciding correctly whether a man was an agriculturist within the meaning of the Act or not, and the result of a wrong decision in such a case might be serious. For example, a sahukar wants to sue an agriculturist, and applies to the Conciliator, to summon him. The Conciliator either through a misunderstanding of the law, *or possibly with a view to serving the sahukar,* decides that the debtor is not an agriculturist and refuses to move in the matter. This decision would have the effect not only of enabling the Sahukar to sue without a certificate, *but also* of depriving the agriculturist of the relief provided for him by the Act. Again, a Sahukar and an agriculturist apply to a Village Registrar to have a bond executed in his office and registered. The Registrar decides that the agriculturist is not an agriculturist. The parties have the bond executed outside. The decision of the Registrar not only makes the bond admissible in evidence, but further deprives the agriculturist of the benefit of the provisions as "going behind the bond." This Department cannot accept the amended section, and is of opinion that the control which the Act gives the Special Judge and his Assistants over Conciliators, and the Inspector General of Registration over Village Registrars, ought to be sufficient. The undersigned is accordingly to suggest the omission of this special provision in the Bill, as introduced into the Legislative Council. In the event of the Government of Bombay pressing for such special provision, this Department suggests that it would suffice to enact, as regards the Conciliator, that when he declined to act he should give a certificate to that effect, and that the certificate should be sufficient to make the plaintiff's suit admissible, and, in the case of the Registrar, that he should be required to register, even though he might be of opinion that none of the parties concerned were agriculturists.

Section 16 of the Bill.

12. With regard to clause (*a*) of this section, which empowers the Local Government to make rules for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of the Act, it may be urged that the Act has been in operation long enough to enable the local authorities to know and describe all the classes of persons who should come under it. For the present the amendment made in the Bill might be accepted, but the Government of Bombay will be requested, when the revised Bill is sent for opinion, to submit a detailed definition of the classes of persons who should come under its operation. If it should be found impossible to frame such a definition, the matter can be further considered.

13. With regard to the letter from the Government of Bombay, No. 6713, dated the 2nd October last, requesting that, as supplementary to the amendments in Act XVII of 1879 proposed in the draft Bill, it may be made clear that Police Patels are not ineligible for appointment as Conciliators, this Department concurs in the reasons assigned by the Local Government for the proposal and recommends its adoption.

14. In conclusion, the undersigned is directed to request that a Bill may be drafted in accordance with the above remarks and forwarded to this Department in view to its being sent to the Government of Bombay for approval or remarks before its introduction into Council.

C. GRANT,
Offg. Secretary to the Government of India.

To

The Legislative Department.

From J. POLLEN, Esq., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India,—No. 1212, dated Bombay Castle, the 24th February 1881.

I am directed to address you on the subject of the proposed amendments to the Deccan Agriculturists' Relief Act of 1879.

2. Since the submission of the draft Bill, which accompanied this Government letter No. 6299 of the 14th September last, Dr. Pollen, the Special Judge under the Deccan Agriculturists' Relief Act, has brought to notice several further points in connection with the actual working of the Act which appear to this Government to call for careful attention.

Dr. Pollen has, at the request of His Excellency in Council, thrown his suggestions into the form of a draft Bill, and upon the draft Bill so prepared His Excellency in Council has taken the opinion of Mr. Naylor, the Legal Remembrancer, who drew up the draft Bill already submitted to the Supreme Government.

3. Both officers concur in thinking certain further amendments desirable, but differ as to a few matters of detail.

4. In order that the points upon which the Legal Remembrancer and the Special Judge are not in accord, may be placed clearly before the Supreme Government, Mr. Naylor's and Dr. Pollen's opinions have been printed in parallel columns and are herewith forwarded.

5. At the same time I am directed to forward twelve copies of selected reports from the Subordinate Judges upon the working of the Act as it at present stands.

6. These reports illustrate the practical difficulties experienced in the interpretation and working of the Act, and show conclusively that many of the proposed amendments are necessary.

7. I am now directed to lay before you the opinion of this Government on the points in dispute beween Mr. Naylor and Mr. Pollen.

8. Dr. Pollen considers a clearer definition of the meaning of "Agriculturist" necessary and gives reasons in support of this opinion. Mr. Naylor also considers some amendment of the "interpretation clause" desirable, but does not consider an improved definition of the meaning of "agriculturist" necessary.

All the reports of the Subordinate Judges, however, point to the conclusion that an improved definition is required, and I am directed to state that this Government agree with the Special Judge in thinking that an attempt should be made to improve the definition so as to remove the doubts, difficulties and confusions which have unquestionably arisen.

9. As to the expediency of allowing an appeal against decrees in certain cases, Government agree with Mr. Naylor and would not make the alteration in section 3, clause (*a*), proposed by Dr. Pollen.

10. Government further agree with Mr. Naylor in considering the new section proposed by Dr. Pollen to be substituted for section 4 unnecessary, and would allow section 4 to remain as at present.

11. As to Dr. Pollen's proposed amendment to section 10, I am directed to state that Government consider it desirable that this opportunity should be taken to remove the doubt which has arisen, and would recommend that the words "or in any executive proceeding in the case of any suit" be added to the section as it at present stands. The further addition to this section proposed by Dr. Pollen does not appear desirable.

12. *Sections 11 and 12.*—As the Subordinate Judges are sometimes misled by the language of the Act, the amendment proposed by Dr. Pollen to sections 11 and 12 would appear necessary. It would not do to leave the correction of misinterpretation to an executive order as proposed by Mr. Naylor.

13. *Section 12.*—Dr. Pollen recommends that the words "not being merely a surety of the principal debtor," should be struck out, and gives practical reasons for this recommendation. He is supported by the opinions of all the Subordinate Judges, and Government concur with him in thinking that the words "not being merely a surety of the principal debtor" should be repealed.

14. In his objection to Dr. Pollen's amendment to section 41, Mr. Naylor appears to have overlooked the fact that the law of equity can give no relief against "collusive, fraudulent and oppressive agreements" *transmuted by law into unappealable decrees.* The remedy suggested by Mr. Naylor is only another and less direct way of doing what Dr. Pollen proposes, and Government consider that it would be better to make the direct amendments suggested by Dr. Pollen.

15. Dr. Pollen proposes to enact in section 43 that the agreement to be sent to the Court must be capable of taking effect as a decree, but Mr. Naylor does not think that power should be given to Conciliators to determine whether an agreement is "capable of taking effect as a decree." He further points out that the reason for taking a written agreement is, that there may be a trustworthy record of the settlement of the dispute. Taking this view, Government consider Dr. Pollen's proposed enactment unnecessary.

16. As to section 44, Government concur with Dr. Pollen in considering that fraudulent conciliation is one of the great dangers by which the successful working of the Act is threatened Having regard to the class of men to whom the work of conciliation has of necessity

been entrusted, Government consider that the system should be surrounded with certain safeguards, and the amendments proposed by Dr. Pollen appear to supply those safeguards.

Mr. Naylor thinks that the proposals are premature, but the reports now submitted show that there has been quite time enough to prove the necessity for amendment. It is not desirable that Subordinate Judges should be made mere machines for the transmutation of questionable agreements into unappealable decrees.

This Government would, therefore, accept this section as re-drafted by Dr. Pollen.

17. Mr. Naylor and Dr. Pollen are in accord as to the proposed amendments to sections 39 and 47, but Mr. Naylor considers that it can hardly be expected that the policy of Government as to existing decrees will now be reversed.

There appears, however, to be much weight in the arguments urged by Dr. Pollen, and want of success in dealing with such agreements would in itself warrant a change in the recent provisions of the law and policy of Government.

18. A very important change advocated by Dr. Pollen, with full reasons (in section 101 of his report No. 386* of 7th June last), is the repeal of section 71 of the Act; but this Government think that such a course would be hardly necessary were simple rules prescribed by Government for Village Registrars. Government are informed that the Village Registrars are overwhelmed with work, and are quite unable to carry out the registration in accordance with provisions of the Registration Act.

19. As all the points discussed appear to belong properly to the consideration of the Legislature (in Committee) by which the Act to be amended was passed, I am directed to forward, for submission to the Supreme Government, the draft Bill and papers described above.

From A. D. POLLEN, Esq., Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay,—No. 1220, dated Camp Shirval, the 14th December 1880. No. 1[illegible]

With reference to Government Resolution No. 7994 of the 30th ultimo, I have the honour to enclose herewith a statement setting forth some of the principal objections to the Deccan Agriculturists' Relief Act, as it at present stands, and also the draft of a Bill which I would wish to see passed into law.

2. I regret that I have been obliged to draw up both the statement and the Bill very hurriedly, for owing to unusual pressure of work I have had little leisure of late.

3. I trust that Government will be able to support most of my recommendations, especially those which relate to the conciliation chapter of the Act. In any case, I venture to hope that my remarks may prove of some assistance when the subject of amendments is being discussed in the Legislative Council of India. I may safely say that I have proposed nothing of which the necessity has not been suggested to me by actual experience. I recognize the imperfections of my draft, and I would be only too glad if the objects it aims at can be attained by the substitution of a better and more skilfully drawn Bill.

Report by J. R. NAYLOR, Esq., Remembrancer of Legal Affairs,—No. 5, dated Poona, the 3rd January 1881. No. [illegible]

The Remembrancer of Legal Affairs has the honour to state that his previous report No. †1091 of 26th August 1880 contains his views on many of the points reviewed in Dr. Pollen's statement. It does not appear probable that the Government of India would sanction, or that this Government would propose, so soon after the Deccan Agriculturists' Relief Act has been passed, any radical changes in its provisions, and the object which the undersigned kept in view in drafting the amending Bill was to limit its scope to the rectification of matters which would not affect any principle, or lead to the re-opening of discussions on disputed questions of policy. So far as Dr. Pollen's present suggestions are of the same category, it seems now a question for the Government of India, who have undertaken to introduce a Bill into the Supreme Council, to determine what particular form the amendments of the Act should take. In submitting, therefore, as directed by Government, a few remarks on the details of Dr. Pollen's statement, the Remembrancer of Legal Affairs has thought it best to throw them into a separate note, so that if these papers are printed and sent on to the Government of India, the two may be printed for facility of reference in parallel columns.

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* Printed on page 193.
† Printed on page 186.

No. 122.

DR. POLLEN'S STATEMENT.

Sections 2 and 73.

1. The first point to be considered is the meaning of the word "agriculturist" as used throughout the Act. It is hardly possible to exaggerate the importance of determining its meaning with such precision as to leave but little room for the caprices of individual interpretation. Since the Act came into force many persons have begun to style themselves agriculturists, who never did so before. These are generally the defendants or debtors, who, on the other hand, are frequently declared by the plaintiffs or creditors not to be agriculturists. Upon the question whether a man is or is not an agriculturist depend the following very important questions:—

(1)—Whether the period of limitation against him is to be computed at 3 years or 6 years, at 6 years or 12 years.

(2)—Whether instruments executed by him require to be registered, and whether they require to be registered by Village Registrars; and under what rules and on payment of what fees they must be registered.

(3)—Whether, if he wishes to bring a suit, or some one else wishes to bring a suit against him, application must first be made to a Conciliator.

(4)—Whether, in certain suits against him, an account should be taken in the manner prescribed by sections 12, 13 and 14 of the Act.

(5)—Whether he may institute a suit for an account under section 16.

(6)—Whether he is liable to imprisonment in execution.

(7)—Whether his immoveable property is liable to attachment and sale in execution of simple money-decrees.

(8)—Whether he may take advantage of the insolvency provisions contained in section 19 and Chapter IV.

(9)—Whether the execution of decrees against him should be transferred to the Collectors.

(10)—Whether he is entitled (under a penalty for non-compliance with his demand) to receive written receipts, annual statements of account and pass-books.

(11)—Whether in certain suits he is liable to pay full fees, or half fees, or no fees at all.

The above enumeration, which is not wholly exhaustive, will suffice to show the extreme

NOTES BY MR. NAYLOR.

DR. POLLEN'S STATEMENT—*contd.*

NOTES BY MR. NAYLOR—*contd.*

importance of defining the class of persons whose interests are so deeply affected. The present definition runs as follows: "'Agriculturist' means a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts; and every agriculturist shall be deemed to 'reside' where he so earns his livelihood."

It is proposed in Mr. Naylor's draft to amend it by striking out the last fourteen words. This, however, will still leave the principal difficulty—namely, who is an agriculturist and what is meant by agriculture—still untouched. In a recent judgment the Honourable Mr. Justice West is reported to have said that the definition was loose, and that he could not say what it meant. What test are we to apply? Are we to apply the test of hereditary ownership of land, or of manual labour in the fields, or both tests combined?

(*a*)—Are holders or proprietors of lands who do not actually cultivate either personally or through their servants, but derive their income from the rents paid by their tenants, agriculturists?

See also paragraphs 64 and 65 of my report No. 386 of 7th June last.

(*b*)—Are holders or proprietors of land—who do not themselves cultivate, but employ servants or day-labourers to till their fields—agriculturists?

(*c*)—Are farm servants, agricultural labourers, or day-labourers, agriculturists?

(*d*)—Are persons—who have no land of their own, but cultivate the lands of others on lease or on the batai system—agriculturists?

2. Mr. Naylor would answer question (*a*) in the negative, and question (*b*) in the affirmative, but I cannot see any great difference, for the purposes of this Act, between a proprietor who cultivates his land through his tenants and one who cultivates his land through his servants. They are both landholders and they both disdain to drive the plough. Again, between the two classes there is an intermediate class of persons, who cultivate a portion of their land by their servants and let out the rest to tenants. One subject of the Act is to check the too rapid transfer of land from the old proprietary class to the money-lending class; and it appears to me that the above classes of persons come equally within the equity of the enactment. With reference to question (*c*) it appears to be conceded that farm labourers come within the definition; but in regard to this I would remark (1) that such persons have no land of their own to be protected, and (2) that very few farm labourers are employed as such all the year round or even

DR. POLLEN'S STATEMENT—*contd.*

for the greater part of the year: most of them have to support themselves by other labour.

3. Section 73 of the Act says that "the decision of any Court of first instance that any person is or is not an agriculturist shall, for the purposes of this Act, be final," but I find that different Subordinate Judges take very different views of the question, and hence great uncertainty prevails. I have received numerous petitions from people on this subject. The evil, however, would be comparatively small, if it were left to the Civil Courts alone to decide who is an agriculturist. The chief difficulty lies in the fact that the public have first of all to decide the question for themselves; they have to judge whether their instruments require to be executed before a Village Registrar, and whether their disputes must be brought before a Conciliator. Next, the Village Registrars have to decide the question, and they have to be guided by the shifting and often conflicting orders issued to them by their immediate superiors, but they are often influenced in their decisions by motives of self-interest, favouritism, or petty spite. In some places I have found that Village Registrars decline to recognize any one as an agriculturist unless he brings a certificate signed by the patel and kulkarni of his village to the effect that he is an agriculturist. Then, again, the Conciliators have to decide the same question, and in doubtful cases they are uncertain how to proceed. The uncertainty that has already arisen makes it manifest that the Courts, the Conciliators, the Village Registrars, and, above all, the general public, require something more definite to guide them in determining this question than what is supplied by the present definition. To remedy this evil Mr. Naylor has proposed in his draft Bill to amend sections 75 and 73 of the Act—(1) by empowering the Local Government to make rules "for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of this Act," and (2) by enacting that "the decision of any Court of first instance or of any person exercising any power or performing any duty under this Act that any person is or is not an agriculturist shall, in all subsequent proceedings in respect of the same matter, for the purposes of which such decision was passed, be deemed to be final." With reference to the first of these proposals, I would much prefer to see an attempt made to provide a better definition of the word in the Act itself, with special reference to the difficulties that have been already experienced, so as to remedy the existing uncertainty at the earliest possible date: and if this were first done it would then be useful to reserve power to the Local Government to provide by rule for other difficulties not at present seen, which may hereafter arise in practice With regard to the second amendment, I would deprecate most strongly having

NOTES BY MR. NAYLOR—*contd.*

(To paragraphs 3 and 4.) Perhaps the best remedy would be to make every order of any authority declaring that any person is not an agriculturist subject to revision by the District Judge. This power would then, under section 54, be exercised by the Special Judge so long as his appointment lasts.

regard to the immense interest at stake for the particular individual concerned, the proposal to place in the hands of such persons as Village Registrars and Conciliators the power of deciding finally who is and who is not an agriculturist. Such a power is almost certain to be abused; and it seems to me absurd that the decision of a Village Registrar should subsequently bind a Subordinate Judge in determining, for instance, such an important point as whether a man's property is liable to be sold or his person to be imprisoned. By the wrongful refusal of a Village Registrar or Conciliator to recognize a man as an agriculturist, an irreparable injury might be inflicted upon him, for he would be deprived of the many advantages which the Act was intended to secure for him. The proposal, moreover, will often fail of its object. When a Village Registrar recognizes two parties or one of two parties as an agriculturist, there will be a record of the fact which will be evidenced by the authenticated execution and registration of the instrument; and if an application or a suit founded on such instrument is subsequently made to a Conciliator or brought before a Civil Court, the Conciliator or the Subordinate Judge will be able to take cognizance of the execution and registration of such instrument and will be bound accordingly; but if a Village Registrar refuses to acknowledge one of the parties as an agriculturist, there will not necessarily be any record of the fact of such refusal. The parties may go away, believing that registration is not necessary, and may execute an instrument privately, and then some years afterwards, when a suit is brought upon the instrument the Civil Court may find that one of the parties really was an agriculturist and may reject the claim on account of the non-registration of the instrument.

4. It is difficult to suggest any really satisfactory remedy. The simplest plan would be to abolish the distinction between agriculturist and non-agriculturist for the purposes of registration and conciliation, and also for the purposes of the limitation provisions of the Act. I am not, however, sufficiently satisfied with the general results of conciliation hitherto to desire to advocate its further extension at present, and I am sensible of the objections to extending the compulsory registration system to all classes of the community. As to the expediency of making the extended period of limitation applicable to all classes, I shall afterwards offer some remarks. The next remedy which it occurs to me to suggest—and the one which I would prefer to see adopted—is as follows. I would not even allow the decision of a Subordinate Judge that any person is or is not an agriculturist to be final: much less would I give such power to a Village Registrar or Conciliator. I would therefore repeal section 73 of the Act, and I would do

DR. POLLEN'S STATEMENT—*contd.*

away with the new section which Mr. Naylor proposes to substitute for it.

The decision of a Subordinate Judge on this point is a judicial proceeding often involving careful investigation and consideration of evidence and very important consequences flow from such a decision. The Subordinate Judge should not only not be bound by a previous haphazard decision of a Village Registrar or Conciliator, but there should be provided means for correcting a wrong decision by the Subordinate Judge himself on this point as well as on other points arising in a suit. The consequence of repealing section 73 will be that in non-appealable cases, such as suits falling under Chapter II, there will be no appeal, but the Special Judge will, when necessary, exercise his powers of revision: in appealable cases an appeal will lie. Thus uniformity of decision will be arrived at. But meantime, it may be asked, how are we to prevent injustice being done by Village Registrars and Conciliators. I would reply, by giving them as little discretion as possible. The public, and especially the moneylending portion of the public, may be expected to take care of themselves. In all doubtful cases they will endeavour to be on the safe side, and they will get their instruments registered and will take their disputes to the Conciliators: and in all doubtful cases the Village Registrars and Conciliators should not be encouraged to raise any objections. No harm can be done by their acknowledging a man to be an agriculturist, but much harm may be done by their refusing. I would make it incumbent on them, as a general rule, to accept the statements or descriptions given by the parties themselves, and in special cases they should refer for instructions to the controlling authority. This might be provided for by departmental orders, and the danger with which the proposed section is fraught might be averted.

5. My proposals, then, with regard to the meaning of the word "agriculturist" may be summed up thus:—

(1)—I would ask Government to decide what classes of persons it wishes to include under the term, and thus entitle to the various benefits contemplated by the Act, and what classes of persons it wishes to exclude. This, once settled, it would be more easy than it now is to frame an improved definition.

(2)—I would then reserve powers to the Local Government to provide for unforeseen cases in the manner proposed by Mr. Naylor in the 16th section of his draft.

(3)—I would wholly repeal section 73 of the present Act.

NOTES BY MR. NAYLOR—*contd.*

(To paragraph 5.) I do not think that an improved definition is necessary. The proposed executive order would, in my opinion, be very undesirable, at any rate so far as concerns Village Registrars. It would enable parties, whom it was never intended that the Act should affect, to obtain by dishonest representations the benefits intended for agriculturists alone, and would thus seriously injure the administration of the general Registration law.

DR. POLLEN'S STATEMENT—*contd.*

NOTES BY MR. NAYLOR—*contd.*

(4)—By executive order I would prohibit Village Registrars and Conciliators from refusing to register or conciliate in cases in which the parties claim to be or are represented or described as agriculturists.

Section 3.

6. I am satisfied with the amendments to section 3, proposed in Mr. Naylor's draft. I would only point out one circumstance that has hitherto escaped attention. In suits for an account falling under clause (*a*) of this section, no appeal will lie against the decision of the Subordinate Judge whatever may be the amount of the claim, though in a similar class of suits under clause (*z*) and in the converse classes of suits under clauses (*w*) and (*y*), a pecuniary limit is provided; this is an omission for which I propose to provide by amending section 10. I would repeal in clause (*y*) the words "not being merely a surety for the principal debtor."

(To paragraph 6.) The question of showing an appeal against decrees in certain suits for account is one of principle. I would not make any alteration at present.

Section 4.

7. This section being admittedly superfluous, I would propose to repeal it, and to substitute for it a section providing that whenever a Subordinate Judge of the second class is deputed to assist a Subordinate Judge of the first class no suit referred to in section 3, clause (*b*), and instituted in the Court of the Subordinate Judge of the first class shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees and does not exceed five hundred rupees, be referred for trial to a Subordinate Judge of the second class, unless the parties to the suit agree that the provision of this chapter shall apply thereto.

See paragraph 71 of my report No. 386 of 7th June last.

(To paragraph 7.) The proposed new section does not appear to me to be necessary. A Subordinate Judge of the second class, deputed to assist a Subordinate Judge of the first class, is still only a Subordinate Judge of the second class, and as such he cannot, under section 3, clause (*b*), of the Act, apply the provisions of Chapter II to any suit which he hears if the subject-matter thereof exceeds in amount or value ₹100, unless with the consent of the parties.

Section 10.

8. If no appeal lies from any decree or order passed in any suit to which Chapter II applies, and if revision is substituted for appeal, the same rule ought to apply in the case of orders passed in execution proceedings subsequent to decree, and this point ought to be put beyond the reach of question. I propose, therefore, to add the words "or in any execution proceeding in the case of any suit," and I would also add a proviso giving an appeal in suits for an account whenever the amount found due exceeds ₹100 or ₹500.

See also paragraph 73 of my report No. 386 of 7th June last.

(To paragraph 8.) See paragraph 9 of my previous report.

Sections 11, 12, 13, and 14.

9. In sections 11 and 12 I would make it clear that, when the suits of the description mentioned in section 3 clauses (*w*), (*y*) and (*z*), are referred to, the pecuniary limits mentioned in the same section are not intended to apply. I have

(To paragraph 9.) I question the necessity for this. If Subordinate Judges misinterpret the Act, an order of the Special Judge will soon set them right.

DR. POLLEN'S STATEMENT—*contd.*

known of several Judges led astray by the language of the Act, and to put it beyond the possibility of mistake I would insert the words "irrespective of pecuniary limit."

10. In section 12 I would again warmly advocate the repeal of the words "not being merely a surety of the principal debtor," and I would only supplement my former observations on this subject by remarking that it is now becoming a very common practice for creditors to omit to sue the principal debtor or to apply to have his name struck out, in order that they may be able to prosecute their suit against the surety merely and thus escape the searching enquiry contemplated by section 12. If the only object of the insertion of these words was, as supposed by Mr. Naylor, to discourage agriculturists from standing security, I can assure Government that the object will never be realized. The ryots are not free agents in the matter; when they live from hand-to-mouth, they must obey the sowkar's behests, and it is often only by becoming security one for another that they can get the advance of grain or cash they are urgently in need of. Many of the Subordinate Judges have dwelt upon the necessity of repealing the words in question.

See paragraph 77 of my report No. 386 of 7th June last.

11. I am content to leave all the other difficulties in connection with sections 12, 13 and 14, which I pointed out on a former occasion, for solution by judicial decision, because I am unable to suggest any remedies. Perhaps it may occur to others to provide legislatively for the defects I have called attention to.

See paragraphs 76, 78, 79, 80, 81 of my report, No. 386 of the 7th June last.

12. I approve of Mr. Naylor's proposed amendments in sections 11 and 12.

SECTION 16.

13. I beg to recommend the addition of an explanation to this section to the effect that a mortgagee may bring a suit for an account under this section. Having regard to sections 42 and 43 of the Civil Procedure Code and to the fact that the natural remedy for a mortgagor is a suit for redemption, I feel considerable doubt whether the opinion expressed by me on this question in former reports is correct in law. If mortgagors cannot bring a suit for an account, the section will be wholly inoperative; all the suits hitherto brought for an account have been brought by mortgagors. I beg to refer more especially to my letter No. 1138* of November 24th. I only as now that an important and doubtful point may

See paragraph 82 of my report No. 386 of the 7th June last, and my letter No. 1138 of 24th November 1880.

NOTES BY MR. NAYLOR—*contd.*

(To paragraph 10.) See paragraph 13 of my previous report. I would not recommend any change in the principle here involved.

(To paragraph 13.) There is no objection to this if the Legislature thinks it worth while. But it is more usual to let it be ascertained by judicial decisions that a law is imperfect before amending it.

* Not printed in the Selection.

DR. POLLEN'S STATEMENT—*contd.*

NOTES BY MR. NAYLOR.—*contd.*

be set at rest, and I therefore provide for it in the accompanying draf.

14. I approve of Mr. Naylor's proposed amendments in this section and also in section 19.

SECTION 22.

15. Although I am not prepared with any amendments for this section, I would again invite attention to the remarks in paragraphs 86 and 87 of my report No. 386 of the 7th June last, which do not, in my opinion, "relate to questions of construction on which it is the province of the Courts themselves to pronounce" as Mr. Naylor supposes they do, but to questions of policy for the consideration of Government.

Chapter VI.—On Conciliation.

16. The Conciliation Chapter of the Act calls for very careful consideration. There are grave dangers attendant upon the system of agreements effected in presence of or through the instrumentality of a Conciliator, and the system should be surrounded by all the safeguards we can provide. At present there are no safeguards, and experience has convinced me that the system has been already abused and is likely to be still more abused as the facilities which it affords become more generally appreciated. By means of agreements before Conciliators, the provisions of the Stamp Law, the Registration Law, the Limitation Act, and the Deccan Agriculturists' Relief Act itself can be successfully evaded and defeated. Time-barred debts and time-barred decrees may be revived, unregistered and unstamped agreements may be validated and legalized, simple money debts may be transformed into mortgage debts, unlimited powers of sale may be created, mortgages may be effected without stamps and without registration, the beneficent provisions of the Act itself may be made of no effect, and inequitable decrees may be obtained with far greater facilities than even under the old system. There is no check against false personation, and there is very little check on Conciliators, who, unless they are themselves strong and high-principled men, are likely to do more harm than good. The mistake is repeated under another form of considering that the creditor and debtor are on equal terms and equally able to look after their respective interests. Instances of collusive agreements have already occurred, some of which I have already brought to the notice of Government. The Subordinate Judges have no discretion in the matter of filing agreements, and no machinery is provided for controlling their proceedings in this respect. There are some matters of procedure, too, unprovided for in the Act, which it would not be possible to provide for by rules. Having thus briefly mentioned some of the general objections to the system, I would now indicate the remedies which I consider to be absolutely and indispensably necessary.

DR. POLLEN'S STATEMENT—*contd.*

17. Section 41 makes it incumbent on a Conciliator to use his best endeavours to induce the parties to agree to an amicable settlement of the matter in dispute between them; and if the matter is amicably settled, the Conciliator is directed in section 43 to reduce the agreement to writing, and to send it to the Court, when after a certain period it is to take effect as a decree against which there is no appeal. Most Conciliators think that, if the parties *consent* to *any* agreement, they are bound to reduce it to writing and send it to the Court, and that they are powerless to prevent collusive, fraudulent or oppressive agreements being made. I think it is imperatively necessary to enact that the agreement should be *approved* by the Conciliator as being fair and reasonable, and I propose to effect this by making some amendments in section 41, 43 and 46. I would insert, in sections 41, before the word "amicable," the words "equitable and;" in section 43, after the word "agreement" where it first occurs, the words "which he approves of;" and in section 46 I would make it incumbent on a Conciliator to grant a certificate if he disapproves of the proposed agreement, and I have added words to provide for this.

18. As an agreement, when filed in Court, is to take effect as a decree, it is necessary that it should be capable of being executed. But many amicable settlements are affected by Conciliators, which are executed on the spot, and, having been thus completely executed, are incapable of further execution and do not require the intervention of the Court. The Act did not contemplate such agreements, and the language of the Act is there inapplicable to them. There have been already hundreds of such agreements and the practice with regard to them varies. Some Conciliators, when a dispute has been finally settled before them, *e.g.*, by the payment of money down, or by the transfer of some chattel, consider that the application is withdrawn and therefore take no further action in the matter; while others follow the literal directions of the Act, and take down in writing the fact of the agreement, get it stamped and send it to the Courts; and in such cases the Subordinate Judges ask what is the use of filing agreements which, having been already executed, leave nothing further to be done in respect to them. I propose to get rid of this difficulty by enacting in section 43 that the agreement to be sent to the Court must be capable of taking effect as a decree. I enlarged on this difficulty in former reports, but Mr. Naylor considered my remarks were founded on a misapprehension of the intention of the Act. The fact, however, is that he misapprehended the purport of my remarks, and that the difficulty has struck every

Vide also paragraph 32 of my report No. 386 of the 7th June last, and paragraph 2 of my letter No. 503 of 2nd July 1880.

NOTES BY MR. NAYLOR—*contd.*

(To paragraph 17.) This proposal that a Conciliator should only accept an agreement come to before him if he approves of it, appears to me to be most inexpedient. It would throw far too much power into his hands. The law of equity gives relief against "collusive, fraudulent and oppressive" agreements and it does not appear to be the intention of the Act to set aside that law in any way. All that seems necessary is that Conciliators should be reminded executively that they should clearly point out to the weaker parties the merits of their case and do their best to dissuade them from agreeing to anything that appears to be extortionate.

(To paragraph 18.) Nor do I think that power should be given to Conciliators to determine whether an agreement is "capable of taking effect as a decree." There are many decrees of Courts which are merely declaratory and are not meant to be executed. Agreements like those Dr. Pollen here refers to are very similar to such decrees. The reason for taking written agreements in all cases, and for their being sent to the Courts, is that there may be a trustworthy record that the dispute between the parties had been finally settled. It is immaterial, in this view whether the agreement, when it is sent to the Court, has already been performed or has yet to be carried into execution.

DR. POLLEN'S STATEMENT—*contd.*

Subordinate Judge and nearly every Conciliator in the four districts.

19. The explanation to section 43 is so worded that it would appear as if the section had been dealing with the appointment of arbitrators. What is meant is that a Conciliator may be nominated arbitrator in a reference to arbitration under this section: and I propose to amend the explanation accordingly. I would not have noticed this had it not been that several Conciliators have misunderstood the section.

20. Section 44 must, I would respectfully urge, be entirely remodelled. As it stands it is pregnant with danger.

21. In the first place the notices to the parties, calling upon them to show cause within a month why an agreement should not be filed in Court, ought to be served openly through the Court itself instead of being delivered to the parties by the Conciliator. In this respect there is no check whatever on the Conciliator: there is no guarantee that the notices have been really served on the right parties, and in the event of personation or of collusion between the Conciliator and the creditor it is possible for a decree to be passed without the real debtor knowing anything about it; and years afterwards he may not be able to prove such want of knowledge. There should be no facilities and no temptations for fraud. Conciliation is often done in a hole-and-corner fashion in a private house; there is no publicity such as attaches to proceedings in Courts, where everything leaks out and is known through every village. The serving of notices through the Court (and the consequent publicity) will act as a most useful safeguard. Some able and experienced Subordinate Judges have dwelt very earnestly on the danger of this feature of the present system. I have not yet heard of any cases of personation, but I have discovered cases in which the Conciliators are, sometimes it may be unwillingly, little better than the tools of the village sowkars. The present system throws the most unprecedented facilities for obtaining decrees in the way of wealthy and unscrupulous creditors. I therefore venture to say that my proposed amendment is absolutely necessary to prevent flagrant abuses. The date for appearance to show cause should be fixed by the Subordinate Judge, so that both parties may, if they wish, be present on the same day.

22. In the next place, I contend that the Subordinate Judges should be allowed some discretion, subject to the control of the District or Special Judge, in the matter of filing agreements. I claim to speak with some experience on this subject. At present the Subordinate Judges are powerless, unless one of the parties appears to show cause within one month.

NOTE BY MR. NAYLOR—*contd.*

(To paragraph 19.) The proposed amendment of the explanation appears to me to be unnecessary.

(To paragraphs 20 to 26.) These proposals appear to me to be premature and to a great extent inexpedient. Premature, because the Act as it stands has not yet had time to have a fair trial. Inexpedient, because it does not appear to be desirable that Conciliators should be made subordinate to the Subordinate Judges, and that an elaborate system of revision and remands should be substituted for the present simple procedure. The Subordinate Judges, it appears to me, wish to interfere too much and to have the Conciliators altogether under their control. No harm can happen to any of the unrepresented parties in any of the cases mentioned in Dr. Pollen's paragraph 26. Agreements to which they or their legal representatives are not parties cannot be held to bind them. The case of Mr. Abaji, reported upon by the Subordinate Judge of Akola, certainly shows the necessity for the exercise of great care in the selection of Conciliators, and I think it would be a good thing to apply some such rule as that contained in the last proviso to section 35 of the Deccan Agriculturists' Relief Act to Conciliators. The best of men will, however, commit mistakes, especially when they are appointed to discharge new and ill-understood functions; and it must take a considerable period for the novel provisions of the Deccan Agriculturists' Relief Act to be properly understood.

DR. POLLEN'S STATEMENT—*contd.*

NOTES BY MR. NAYLOR—*contd.*

They are bound to file agreements however oppressive or unjust they may seem to be. Then, again, neither the District nor the Special Judge has any powers of control over the Subordinate Judges in respect of filing agreements. The danger of the system is very forcibly illustrated by a report recently made to me by the Subordinate Judge of Akola on the results of his enquiry into a petition complaining of the misconduct of the Kotul Conciliator. I would ask the earnest attention of the Local and Supreme Government to this report as indicating the absolute necessity of providing all the checks and safeguards possible. The District or Special Judge must have power given to them (and this power must be retrospective) to set aside agreements already filed and to refer the parties to the civil courts. I propose, therefore, to empower the Subordinate Judges *proprio motu* to remit or to set aside agreements, and to empower the District or Special Judge to control and revise the proceedings of Subordinate Judges in this respect. I proposed also to explain what are sufficient causes for remitting and what for refusing to file an agreement, and what are the consequences of a refusal to file points left undetermined by the present law. I would allow an agreement to be remitted for any of the following reasons:—

Vide also paragraphs 3 and 4 of my letter No. 503 of 2nd July, and my No. 1117 of the 18th November 1880.

(*a*) When it is so indefinite in its terms as to be incapable of execution.

(*b*) When an objection to its legality is apparent on the face of it.

(*c*) When it contains an obvious error or is insufficiently stamped according to the rules in force.

And I would allow an agreement to be set aside for any of the following reasons:—

(*d*) Corruption or misconduct of the Conciliator.

(*e*) Any reason which would vitiate a contract under the Indian Contract Act.

23. In the next place, instead of making the agreement itself the decree, I would make the order for filing it a judgment, on which a decree should issue in terms of the agreement. If this were done, any incidental costs might be provided for in the decree.

24. The refusal to file an agreement should be equivalent to the grant of a certificate, and the aggrieved party should then be at liberty to bring a regular suit on his original cause of action without further application to a Conciliator. Some confusion has already been caused by the omission of any provision like this in the present law.

DR. POLLEN'S STATEMENT,—*contd.*

25. To provide for the due control and supervision of the Subordinate Judges in the exercise of the discretion thus granted to them, which, by the way, it is better that they should have than the Conciliators, I would propose to extend the powers of the District or Special Judge under Chapter VII, and the addition of two words will suffice for this.

26. With reference to the above subject I may mention here that the Subordinate Judges have repeatedly brought to my notice cases in which agreements have been sent to them, purporting to be executed by persons who have no right to make them, *e.g.*, agreements made by persons calling themselves guardians of minors who have no certificates of administration, agreements alienating immovable property made by persons who have no capacity of alienating such property, agreements made by sons in the absence of their fathers, agreements made by one person on behalf of another, in all which cases it would be improper to order the agreements to be filed, as the law now requires.

27. Section 45 is very awkwardly drafted, which has given rise to much misunderstanding. I object to the words "the Court having jurisdiction in the matter," and to the words "shall cause it to be filed," and to the reference to sections 523 and 524 of the Civil Procedure Code. There is no reason why an agreement under this section should not be sent to the same Court as an agreement under section 44 is sent to, namely, the Court of the Subordinate Judge of lowest grade having jurisdiction *in the place.* No mistake can be made about this: but the Court having jurisdiction *in the matter* may be that of the District Judge, the Agent for the Sirdars, a 1st Class Subordinate Judge, a 2nd Class Subordinate Judge, a Jagirdar exercising civil jurisdiction or even a Village Munsif. If the language of this section be carefully compared with that of sections 523 and 524 of the Civil Procedure Code, it will be found that there is much confusion, and, as a matter of fact, the Subordinate Judges do not know how to proceed. My amendment will remove the difficulty.

See paragraph 93 of my report No. 386 of the 7th June last, and paragraph 5 of my letter No. 503 of 2nd July.

28. In section 46 I would insert words to provide for the contingency of the Conciliator disapproving of the alleged agreements. I would repeat here that, unless the approval of the Conciliator is joined to the consent of the parties, even the most honest and ablest Conciliators will be liable to be utilized as mere machines for legalizing collusive and unjust agreements, wrung from the dispairing debtor by the pressing necessity of his case, and for procuring inequitable decrees thereon.

NOTES BY MR. NAYLOR,—*contd.*

(To paragraph 27.) I see no objection to some such alteration of the wording of section 45 as Dr. Pollen proposes, although I do not think it actually necessary. If any alteration is made, it should save the necessity for the issue, whether by the Subordinate Judges or by the Conciliators, of notices to the parties to agreements for reference to arbitration to show cause why their agreements should not be filed. This, I take it, is the intention of the present section (*vide* paragraph 28 of my previous report), but Dr. Pollen seems to contemplate that such notices should be issued by the Subordinate Judges.

DR. POLLEN'S STATEMENT—*contd.*

29. In sections 39 and 47 I would propose to exempt from the conciliation process decrees passed before the 1st November 1879. There are several reasons why this is very desirable. One reason is that during the last few months the Conciliators have been so overwhelmed with applications that their business has been almost brought to a dead lock. This is a grave practical difficulty which threatens to imperil the success of the whole scheme. At the present moment there are about 17,000 applications in arrears pending before Conciliators: and the arrears are increasing every month. I estimate that about 50 per cent. of the total number of applications hitherto presented arise out of old decrees, the holders of which require a Conciliator's certificate before they can ask the Courts to execute their decrees. If their work were reduced by 50 per cent., the Conciliators would, I hope, be able to keep pace with it. At present, owing to the accumulation of arrears, *boná fide* suitors and applicants for execution are delayed, and opportunities for favoritism or undue preference are presented. The next reason is that applications by decree-holders are hardly ever successfully conciliated. The decree-holder has nothing to gain by agreeing to an amicable settlement, for the Court is bound to grant him execution without going behind the decree, and he does not therefore fear that his claim will be cut down, as the holders of undecreed debts do. The judgment-debtor, too, has nothing to gain by conciliation, for the Courts now have full powers, which they freely exercise, to allow him reasonable instalments. The consequence is that in such cases conciliation is almost invariably unsuccessful. A third reason is that the absence of success removes the only possible plea that can be urged in favour of placing obstacles in the way of decree-holders, which, *primá facie*, is unjust and indefensible. A fourth reason is the danger of reviving time-barred decrees by means of collusive or fraudulent agreements. Another reason is that old decrees on simple money debts, in accordance with the recent ruling of the Bombay High Court as to the non-retrospective effect of sections 21 and 22, may be enforced by the imprisonment of the debtor and attachment of his immoveable property, whereas agreements under section 43, which supersede such decrees, have only the force of *new* decrees and carry with them no such right. Hence a decree-holder can hardly be expected to waive his old decree and all its advantages by substituting for it a new agreement. This is a most important point.

Vide also previous reports.

30. If my amendment to section 47 is accepted, Mr. Naylor's amendment to section 48 becomes unnecessary. If not, the latter amendment is very necessary, as I have pointed out in previous reports.

NOTES BY MR. NAYLOR—*contd.*

(To paragraph 29.) My opinion was always against making the provisions of the Act applicable to existing decrees, but that policy was deliberately sanctioned by this Government and approved by a majority of the Supreme Legislature, and it can hardly be expected that it will now be reversed. The block caused by the large number of applications affecting old decrees is a temporary one merely.

DR. POLLEN'S STATEMENT—*contd.*

31. I would, however, wish to bring to special notice the fact that several applications for execution of decrees have been *already* dismissed as *time-barred* because the lower Courts have not excluded the time necessarily spent in the attempt at conciliation. This is a consequence of the omission in section 48 as it now stands, and I submit that the sufferers thereby are entitled to retrospective relief at the hands of the Legislature. This might be effected by the addition of a new paragraph to section 48, such as I have inserted in my draft. I am not, however, satisfied with the wording of my draft.

Vide also paragraph 94 of my report No. 386 of 7th June last.

Chapter VII.—Superintendence and Revision.

32. It is necessary, as pointed out above, to give the District or Special Judge powers of controlling the Subordinate Judges in the matter of filing agreements, and I provide for this by a very simple amendment.

I would also give power to the Special Judge to state a case for the opinion of the High Court, as this is the only way of clearing up doubts on difficult points of interpretation and procedure; but I make no provision for this in the draft, as I am not certain that section 617 of the Civil Procedure Code will not serve the purpose. I only suggest the point for consider. tion when the Bill is before the Council.

Chapter VIII.—Registration by Village Registrars.

33. Although I would like to see the whole system of village registration placed on a different basis to that on which it now stands, I have no objection, if the present system is to continue, to offer to the particular amendments embodied in Mr. Naylor's draft. I would only invite attention to the remarks contained in paragraph 99 of my report No. 386 of 7th June, more especially with reference to the question whether Government wish to stop the system of signing khatas (or statements of account) in money-lenders' or shop-keepers' account books; and whether such signing of khatas is equivalent to the execution of an instrument within the meaning of section 56. I may mention in connection with this that one of the effects of section 56 has been to increase enormously the practice of requiring bonds, even for the pettiest of sums, which results increased expense to the debtor out of all proportion to the amount of the loan.

34. I would add a section to this chapter providing for the registration of all agreements affecting immoveable property which are effected by Conciliators under section 43. Such agreements

NOTES BY MR. NAYLOR—*contd.*

(To paragraph 31.) I concur in this suggestion.

(To paragraph 34.) A provision might be added requiring the courts, to which such agreements are forwarded, to send

DR. POLLEN'S STATEMENT—*contd.*

often supersede, modify, or vary previously existing mortgage bonds and other instruments dealing with immovable property, and often create also new mortgages and charges on such property. Unless there is a record of such changes, great uncertainty in dealing with land will undoubtedly prevail. Several experienced judicial officers have represented to me the necessity for registration in such cases; and, as this point has not been noticed before, I desire now to bring it prominently to the notice of Government.

SECTION 68.

35. In this section, as the words "any case cognizable by a Subordinate Judge under this Act" have no definite meaning, and occasion considerable difficulty to the Subordinate Judges, pleaders and parties, I propose, by substituting the words "any suit falling under Chapter II of this Act," to express what I assume was the meaning intended. Strictly speaking, there are no suits *cognizable* by the Subordinate Judge *under this Act*, though there are many suits to which one or other of the provisions of the Act apply.

36. I would much prefer, however, to repeal the section entirely and to substitute the section originally proposed. The exclusion of pleaders is unpopular and does on the whole more harm than good.

Paragraph 61 of my report No. 386 of 7th June last, and my letter No. 564,* dated the 17th July 1880.

I would refer to my previous reports on the subject, marginally noted. One effect of the exclusion of pleaders is that the people are fleeced by petition-writers, "umedwars" *et hoc genus omne*, who are under no control and do the work in a slovenly fashion. If the section is to be retained, it will be necessary to license a certain number of Karkuns in each Court to perform for illiterate parties the services hitherto rendered by pleaders, especially in Courts which have been deserted by pleaders since the Act was passed.

37. Section 69 is inoperative, but it can do no harm to retain it if section 68 is also retained.

SECTION 71.

38. I still think that this section should be repealed and I object to the section which Mr. Naylor proposes to substitute for it and to the proposed new rules by which only it will be possible

No. 514,* dated the 5th July 1880.
No. 542, dated the 12th July 1880.
No. 549, dated the 13th July 1880.
No. 606,* dated the 31st July 1880.
No. 615, dated the 2nd August 1880, addressed to the Legal Remembrancer.
No. 1134,* dated the 23rd November 1880.

to work the section, but which, at the same time, will deprive the Act of Registration of all its value. Being much pressed for time, I would ask leave to refer to my former letters on this subject marginally noted, and in this place I would only

NOTES BY MR. NAYLOR—*contd.*

copies of them to the proper officers for registration without charge.

(To paragraph 35.) This proposal will considerably limit the operation of section 68. The words "case cognizable under the Act" were, I think, meant to include insolvency-proceedings and other miscellaneous matters, and not merely suits under Chapter II.

(To paragraphs 37 and 38.) I cannot usefully add anything to my former remarks on the subject of these two paragraphs).

* Not printed in the Selection.

DR. POLLEN'S STATEMENT—*concld.*

touch on one or two points not previously referred to. There are at the present moment *thousands* of old mortgage-deeds lying in the Sub-Registrar's offices awaiting registration, most of which were presented during the last few days of October. These instruments cannot be registered under the present state of the law. In addition to those actually presented for registration, there are many more which have been held back by their owners in expectation of an amendment of the Act. Large numbers again have been quite lately superseded by new instruments exacted from executants as a precautionary measure. Then, again, there are numbers of old instruments no longer in force, which have been long superseded by new contracts, but which have been kept as useful corroborative evidence in case of disputes, and such old superseded instruments are often of the greatest possible assistance to the courts in taking accounts under sections 12 and 13. But the effect of section 71 is to render even such instruments inadmissible in evidence, and it would be most unreasonable to expect people to register such documents. Again, many suits have been adjourned from month to month and are still pending indefinitely in consequence of section 71. Once more, then, I would respectfully recommend the repeal of this section for which purpose I have inserted a section in my draft.

Section 72.

39. In section 72 I would strike out the words "under this Act" where they first occur as being superfluous and embarrassing, and I would also make the extended period of limitation applicable to all classes of people in the four districts. This change would be most popular and would remove many inequalities and difficulties. It is recommended by Mr. Wedderburn and by all the ablest and most experienced Subordinate Judicial officers. The difficulties of applying the section as it at present stands are very great, more particularly in cases where agriculturists and non-agriculturists are parties to the same contract or to the same suit. Agriculturist sureties are sued for debts which would be time-barred against their principals, and the defence that they are not liable is not raised or is overlooked. Various other difficult combinations are constantly turning up in practice, the best remedy for which would be the removal of the distinction in question for the purposes of limitation.

40. If this suggestion is not approved, Mr. Naylor's amendments should be adopted.

41. There are other difficulties in connection with the Act, but I have touched upon the most important.

A. D. POLLEN,

Special Judge.

NOTES BY MR. NAYLOR—*concld.*

(To paragraph 39.) I have referred to these difficulties in paragraph 5 of my previous report. I should myself prefer to see the special limitation repealed, but no doubt either that course, or what Dr. Pollen proposes, is absolutely necessary in order to prevent innumerable complications.

J. R. NAYLOR,

Remembrancer of Legal Affairs.

DRAFT.

No. 123.

A Bill to amend the Deccan Agriculturists' Relief Act, 1879.

For the purpose of amending the Deccan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:—

Amendment of section 2.

1. For clause (2) of section two, the following clause shall be substituted (namely):— See paragraphs 1, 2, 3, 4, 5 of accompanying statement.

"(2)

This section is left blank for the reasons given in these paragraphs.

Amendment of section 3.

2. In clause (*a*) of section three, the words "by an agriculturist" are repealed, and for the words "the provisions hereinafter contained" the words "section sixteen of this Act" shall be substituted. See paragraph 6 of statement and section 2 of Mr. Naylor's draft.

In each of the clauses (*y*) and (*z*) of the said section before the words "an agriculturist" the words "or was, when the property or any portion thereof was mortgaged," shall be inserted. Ditto ditto.

In clause (*y*) of the said section, the words "not being merely a surety for the principal debtor" are repealed. See paragraphs and 10 of statement.

Amendment of section 4.

3. For section four, the following section shall be substituted (namely):—

Certain suits to be tried by First Class Subordinate Judges.

"4. Whenever a Subordinate Judge of the second class is deputed to assist a Subordinate Judge of the first class, no suit of the descriptions referred to in section three, clause (*b*), and instituted in the Court of the Subordinate Judge of the first class, shall be referred for trial to a Subordinate Judge of the second class, unless the parties agree that the provisions of this chapter shall apply thereto." See paragraph 7 of statement.

Amendment of section 10.

4. For section ten, the following section shall be substituted (namely):— See paragraph 8 of statement.

No appeal to lie.

"10. No appeal shall lie from any decree or order passed in any suit, or in any execution proceeding in the case of any suit, which this chapter applies:

Proviso.

Provided that in suits for an account falling under clause (*a*) of section three, an appeal shall lie if the amount found due by the plaintiff, or claimed by the defendant, exceeds five hundred rupees." See paragraphs and 8 of statement.

Amendment of section 11.

5. In section eleven, before the words "an agriculturist" the words "or was, at the date of the cause of action," and before the word "agriculturists" the words "or who, at the date of the cause of action where," shall be inserted. See paragraph 9 of statement and section 3 of Mr. Naylor's draft.

Amendment of section 12.

6. In section twelve after the word "suit," where it occurs the first and second times the words "irrespective of pecuniary limit" shall be inserted. See paragraph 9 of statement.

In the same section the words "not being merely a surety for the principal debtor" are repealed, and before the words "an agriculturist" the words "or was at the date of the cause of action" shall be inserted. See paragraph 1 of statement. See section 4 of Mr. Naylor's draft.

Amendment of section 16.

7. In section sixteen after the word "agriculturist" the words "or was, at the date of the cause of action" shall be inserted. See section 5 of Mr. Naylor's draft and paragraph 14 of statement.

To the same section the following explanation shall be added (namely):— See paragraph 1 of statement.

"*Explanation.*—A mortgagor may bring a suit under this section."

Amendment of section 19.

8. In section nineteen for the words "there is no other claim against him" the words "the whole of the judgment-debts due by him amount to less then fifty rupees," and for the word "sum" where it occurs the second time the word "debts" shall be substituted. See section 6 of Mr. Naylor's draft and paragraph 14 of statement.

See paragraph 29 of statement.

Amendment of section 39.

9. In section thirty-nine the words "or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated" are repealed.

See paragraphs 16 and 17 of statement.

Amendment of section 41.

10. In section forty-one before the word "amicable" the words "equitable and" shall be inserted.

Ditto ditto. See paragraphs 16 and 18 of statement.

Amendment of section 43.

11. In section forty-three, after the word "agreement" where it first occurs, the words "which he approves of" and after the word "matter" the words "and capable of taking effect as a decree," shall be inserted.

See paragraph 19 of statement.

And for the explanation to the said section, the following shall be substituted (namely):—

"*Explanation.*—A Conciliator may be nominated as arbitrator in an agreement for reference for arbitration under this section."

See paragraphs 16 20, 21, 22, 23, 24 and 26 of statement.

Amendment of section 44.

12. For section forty-four, the following section shall be substituted (namely):—

Procedure when agreement finally disposes of case.

"44. When the agreement is one finally disposing of the matter and capable of taking effect as a decree, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides.

The Court on receipt of such agreement shall forthwith issue to each of the parties thereto a written notice to show cause before it on a day to be fixed therein, which shall not be earlier than one month or later than two months from the date of such notice, why such agreement should not be filed in such Court.

On the day so fixed the Court shall, unless cause has been shown as aforesaid, order such agreement to be filed; and such order shall be equivalent to a judgment of the Court on which a decree shall pass in terms of the agreement, bearing the date of the order of filing, and from such decree no appeal shall lie:

Provided that the Court may, if it thinks fit, either on cause being shown or *ex proprio motu*, remit the agreement back to the Conciliator or refuse to file the same.

Explanation I.—An agreement may be remitted for any of the following reasons:—

(*a*) When it is so indefinite in its terms as to be incapable of execution.

(*b*) When an objection to its legality is apparent on the face of it.

(*c*) When it contains an obvious error, or the fee paid in respect of it is insufficient according to the rules for the time being in force.

The Court may refuse to file an agreement for any of the following reasons:—

(*d*) Corruption or misconduct of the Conciliator.

(*e*) Any circumstance which would vitiate a contract under the Indian Contract Act.

(*f*) Any other cause which under the circumstances of the case may seem to the Court sufficient."

See paragraph 27 of statement.

Amendment of section 45.

13. For section forty-five, the following section shall be substituted (namely):—

Procedure where agreement is for reference to arbitration.

"45. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court as aforesaid, and such Court shall proceed thereon in the manner provided in sections 523 and 524 of the Code of Civil Procedure."

See paragraphs 19 and 28 of statement.

Amendment of section 46.

14. In section forty-six the words "if the Conciliator disapproves of the proposed agreement, or" shall be inserted at the commencement of the section.

See paragraphs 29 and 30 of statement.

Amendment of section 49.

15. In section forty-seven the words "and no application for execution of a decree passed before the date on which this Act comes into force" are repealed.

Addition to section 48.

16. To section forty-eight the following paragraph shall be added (namely) :— See paragraph 31 of statement.

Saving of certain applications.

"Applications for execution of decrees, which have become, or may become, barred in consequence of the time necessarily and *bonâ fide* spent in conciliation not being allowed for in computing the period of limitation, shall be admitted, if presented within two months from the date on which this Act comes into force."

Amendment of sections 50, 51, 52 and 53.

17. In sections fifty, fifty-one, fifty-two and fifty-three, after the words and figures "Chapter IV," the words and figures "or Chapter VI" shall be inserted. See paragraphs 16, 25 and 32 of statement.

18.
19.
20. } The same as sections 9, 10 and 11 of Mr. Naylor's draft. See sections 9, 10 and 11 of Mr Naylor's draft and paragraph 33 of statement.

Addition of new section after section 63.

21. After section sixty-three the following section shall be inserted (namely) :— See paragraphs 1[illegible] and 34 of statement.

"63A. When an agreement is filed under section forty-four and such agreement purports to create, modify, transfer evidence, extinguish or release any interest in immoveable property belonging to an agriculturist, the Court shall, after passing a decree thereon, send such agreement to be registered by a Village Registrar in accordance with such rules as may be prescribed in this behalf under section sixty-one."

Amendment of section 68.

22. In section sixty-eight, for the words "any case cognizable by a Subordinate Judge under this Act" the words "any suit falling under Chapter II of this Act" shall be substituted. See paragraph 3[illegible] of statement, bu[t] also paragraph 36.

Repeal of section 71.

23. Section seventy-one is hereby repealed. See paragraph 3[illegible] of statement and section 12 of Mr Naylor's draft.

Amendment of section 72.

24. In section seventy-two the words "against an agriculturist under this Act" are repealed. See paragraphs 3[illegible] and 40 of statement.

Repeal of section 73.

25. Section seventy-three is hereby repealed. See paragraph[s] 1—5 of statement.

Amendment of section 75.

26. For section seventy-five, the following section shall be substituted (namely):— See paragraph[s] 1—5 of statement and section 16 [of] Mr. Naylor's draft.

Additional power to make rules.

"75. The Local Government may from time to time make rules :—

(*a*) for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of this Act, and

(*b*) generally for carrying out the provisions of this Act."

Interpretation of "section."

27. In this Act "section" means section of the Deccan Agriculturists' Relief Act, 1879. See section 17 Mr. Naylor's draft.

A. D. POLLEN,
Special Judge.

No. 124.

From Dr. A. D. POLLEN, Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay, Judicial Department,—No. 1247, dated Camp Satara, the 20th December 1880.

With reference to paragraph 22 of the statement which accompanied my letter No. 1220 of the 14th instant, I have the honour to forward herewith the report of the Subordinate Judge of Akola therein referred to, which by an oversight I omitted to enclose at the time.

2. This report deserves careful consideration, though the language used in it is somewhat quaint, for it shows unmistakeably the need of providing means for correction of unjust agreements which the ignorance of the indebted agriculturists prevents them from themselves impeaching, in the proper manner and within the proper time.

3. Unless the Subordinate Judges, subject to the control of the District or Special Judge, are empowered of their own motion to set aside and remit improper agreements, it will be found that we are putting into the hands of an untried and almost unknown body of men a powerful engine for the oppression of the very classes for whose benefit we have been legislating; and I, for my part, would prefer to see the whole conciliation system abolished, if it be not surrounded with the safeguards which I have suggested or others conceived in a similar spirit.

4. I have the honour to request that the enclosed report may be returned to this office for record, when the subject is disposed of.

No. 125. From DINANATH ATMARAM DALVI, Esq., Subordinate Judge, Akola, to Dr. A. D. POLLEN, Special Judge,—No. 13, dated Akola, the 6th December 1880.

With regard to the first petition against Mr. Abaji Bhikaji, I have the honour to report that on summoning all the signatories to that petition I found that only one of them, Dhondi walad Ghodhaji, admitted having made the petition at all and seemed to be altogether lukewarm about it. The rest denied all knowledge of the petition, though one of them, Dada walad Madhoba, sweated profusely while denying his *signature* to the petition which purported to be in his own handwriting. His denial appeared to be the result of some undue influence or threat. It is certain that his demeanour showed that he was either ashamed of his denial or alive to its falsehood.

As one of the petitioners admitted the petition and another appeared to deny his signature to it through undue influence, I proceeded with the inquiry regarding the matters stated therein I took the deposition of Ramkrishna Mahajan, who was accidentally in Court for other business, as to his brother-in-lawship to the Conciliator Abaji, and as to his two agreements in suits Nos. 92, 25, 27 and 215. These three agreements appear to be tainted by the defects of (1) intentional omission of investigation into the history of transactions with ryot debtors according to sections 12, 13 and 14 of Act XVII of 1879, (2) insertion of a stipulation of sale of ryot's land, (3) delivery of bullocks useful for agricultural purposes in satisfaction of money-lender's claims against the spirit of section 266 of Act X of 1877.

It is noteworthy that Bala Daji, though denying his signature to the petition against Mr. Abaji, makes two important statements, (*a*) that he (Abaji) had given a certificate according to section 46 to his money-lender Amdubhai, who even handed the court-fee labels to him for the same; and (*b*) that on the threats of one Baba Soman, a particular crony of Abaji, he agreed to the agreement before the Conciliator; (*c*) that he has been delivering 8 maunds every year to his mortgagee from the date of the mortgage up to date of his agreement. The statement (*a*) has been mostly admitted by the Conciliator Mr. Abaji in his deposition, as also his intimacy with Baba Soman and his intentional omission of investigation into the past history of the mortgage transaction of the ryot debtor Bala Daji Arotay, and particularly of his annual deliveries of 8 maunds of grain to his mortgagee from Jyestha Shudh 9, Shaik 1793, up to the date of his agreement for the last ten years. It appears from the 36-rupee promissory note produced by Bala Daji that the annual delivery of the 8 maunds is commuted to R36 with the consent of both the parties, and it appears from the 8-maunds grain note, dated Chaitra Wadya 9, Shaik 1799, produced by the same person, that all former demands of rent in kind or on khatas, etc., with the exception of the mortgage-deed only, have not remained unsatisfied, *i.e.*, have been paid off. Both these cancelled notes executed by Bala Daji to his creditor show that those notes have also been paid off. Taking R36 as a fair money valuation of the 8 maunds of grain, the amount of all the ten years' delivery of grain comes up to the big sum of R360, which is enough to swallow up the plaintiff's mortgage claim of R150 with R150 more for interest by the rule of *damdupat*. An inspection of Bala Daji's agreement No. 3 is enough to show that it is tainted by (1) intentional omission to investigate the past history of the ryot's mortgage transaction; and by the (2) insertion of a stipulation for the sale of the ryot's land; (3) and by the insertion of a clause for the stoppage of all the claims of other creditors or of the ryot against the land until the claim of Amdubhai is satisfied; (4) by the fact that the agreement was procured by undue influence or means. Here therefore is an agreement or *kabuliyat* ostensibly framed by a Conciliator according to section 44, which clearly appears to be not only illegal but uncalled for by undeniable evidence certainly known to the Conciliator and now produced in this enquiry. Had proper investigation been made into the past history of this ryot's mortgage transaction and full credit been given to annual deliveries of 8 maunds of grain or R36 in lieu thereof, the mortgagee's claim would have disappeared altogether, and the mortgagee would have been saddled with a counter-claim of the ryot against him, or would have had to disgorge the ill-gotten moneys equitable and really due to his ryot debtor. After taking all these depositions and inspecting the agreements impeached, I took the deposition of Mr. Abaji, which tells its own tale, mostly in confirmation of what has been set out above. In connection with the statement (*a*) made by Bala Daji as to the delivery of a certificate by Mr. Abaji to Amdubhai, his creditor, and partly admitted by the Conciliator in his deposition, I beg most humbly to suggest that it would be an improvement

in the law to add a clause to sections 44, 45 and 46, making it imperative on the Conciliator to give a copy of the agreement either finally disposing of the case or referring the matter to arbitration, or a copy of the certificate if the conciliation fails to the defendant against whom suits have been filed before him as soon as the agreements under sections 44 and 45 and the certificate under section 46 are reduced to writing. Such a clause will always prevent any possible collusion between the suitors and the Conciliators, and inform both parties of what is going on before the Conciliators in respect of their rights. I am supported with respect to the above proposal by the analogy of copies which Village Registrars are compelled to furnish two parties by the 2nd paragraph of section 58. With respect to the agreement in suit No. 3 and agreements in suits Nos. 92, 25, 27 and 215, I submit it would be a great relief and boon to Bala Daji and other ryots, should there be any provision in the law to cancel agreements so unconscientiously framed. The Kotul ryots injuriously affected by these agreements or *kabuliyats* did not avail themselves of the benefit of paragraph 2 of section 44 by showing cause before me as Subordinate Judge for not filing these agreements. As these Kotul ryots failed to show such cause before me in the regular way, I had no recourse but to order these and even other agreements of Mr. Abaji, to the number of about forty, to be filed according to the last paragraph of the said section. I had no legal right as Subordinate Judge to meddle with such agreements *proprio motu*, so I was compelled to file some of them even after Mr. Abaji was examined on the 18th October last. Notwithstanding my remonstrances Mr. Abaji continued his course of framing such unconscientious agreements even after his deposition of the 18th October last. The fact that the Kotul ryots did not take the benefit of paragraph 2 of section 44 clearly shows their helplessness, their patience under suffering, and the ignorance of their rights to a remarkable degree. Their peasant wrongheadedness broke out at the instigation of the Brahmin enemies of the Conciliator into personal invectives in the shape of petitions against him, instead of impeaching his agreements in the regular way by showing cause against them before me as Subordinate Judge. I humbly believe it would considerably help the policy and the spirit of the Deccan Agriculturists' Relief Act to insert a clause in section 44 empowering the Subordinate Judge *proprio motu* to impeach such agreements for clear irregularities, or failures of justice, and to get them cancelled by a reference to the Special Judge. A careful inspection of all the agreements passed before Mr. Abaji was made, and the greater irregularities and failures of equity were discovered in those agreements which had not been impeached in the petition against him. The Conciliator's cousin, the Vakil Mr. Madhav, was pleading here for some days, so it did not appear to me advisable to proceed with the inquiry, which therefore was delayed for some time.

In the meantime the second petition against Mr. Abaji was referred to me for enquiry and report. In the main, it is like the first, with the slight difference of a reference to another agreement No. 61, procured by Dharramchand from his ryot Kavji walad Mavji. I issued notices to the ryots against whom agreements were framed by Mr. Abaji, whether filed or not filed, especially the latter, and also summonses to the signatories to the second petition. It is remarkable that none of the signatories to the second petition who presented themselves in Court even so much as acknowledged having made the petition at all. They denied all knowledge of the same on the 16th November. The next day Mahadu and Sakharam walad Bagaji, two full brothers, denied all knowledge of the agreements in suits Nos. 256 and 136 framed by the Conciliator against them, denied their alleged signatures to them, or denied having told the kulkarnis of their respective villages to make their alleged signatures to them, and denied being summoned by the Conciliator at all (see their affidavits Nos. 9 and 10). Another pair of brother ryots, Gainu and Takaram, Nos. 11 and 12, presented themselves in Court, and one brother Gainu admitted the agreement No. 245, and the other took objection to the same for (1) want of inspection of former accounts; (2) for being under age, he being 14 or 15; (3) for want of certificate of guardianship, his estate being worth more than R250. It was apparent that, while Tukaram was deposing, his brother Gainu was prompting him not to take objections to the agreement, and in fact he, Tukaram, became lukewarm and stated indifferently as to the plea of want of inspection of accounts. The ryots Nos. 13, 14, 15, took objections to the agreements Nos. 262, 264, 267, and No. 16 admitted agreement No. 263 without objections, though exceptions may well be taken to it along with the others. The common objections of all the ryots Nos. 9, 10, 12, 13, 14, 15 against the agreements range themselves into the following heads: (1) want of inspection of former accounts and failure to investigate past history of transactions; (2) the insertion of the stipulation for the sale of the ryot's lands. No. 13 takes the special objections, (1) that Mr. Abaji took no notice or gave no credit to his deliveries of paddy, 17 maunds, to his sowkar for the last three

years; (2) to the insertion of a stipulation for taking the produce of the land in lieu of interest. No. 14 also takes this last special objection regarding mesne profits in addition to other objections. Having secured affidavits Nos. 9, 10, 12, 13, 14, 15, I again summoned Mr. Abaji to present himself in this Court with his records on the 18th November, but he failed to do so, pleading sickness (see his report of sickness No. 17). I now formed the resolution of conducting the inquiry at the village of Kotul itself where Mr. Abaji lives and carries on his business of conciliation, and at the same time issued notices to other ryots calling upon them to present themselves before me at Kotul for inquiry as to their agreements whether filed or unfiled. On the 19th instant the affidavits Nos. 9, 10, 12, 13, 14 were read in presence of the ryots who deposed to them and the Conciliator, who was requested by me to cross examine the deponants as to the matters stated in their several depositions. After recording the cross-examinations of Mr. Abaji I took his deposition No. 45, which clearly admits many irregularities and failures of justice on the stereotyped plea that parties voluntarily consented to the agreements framed in their cases. A careful study of Mr. Abaji's long deposition, with due reference to the several agreements mentioned therein, is enough to convince the reader of the many glaring irregularities and failures of justice that vitiate his proceedings. After the conclusion of his depositions Mr. Abaji gave his *razinama* resigning his offices of Conciliator and Village Munsif. The objection statements of Dhondi Vankuji No. 49, debtor to Mr. Ocean (of V. and C.) Hari Baji duly surnamed Samudra in the vernacular, and the objection statements of the ryots Nos. 46 (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), were taken in presence of the Conciliator. Now ryot 46 (*b*) preferred objections to the ever-memorable agreement No. 213 containing five simple money bonds barred by the law of limitation (1) as to the want of inspection of accounts; (2) for want of certificate of guardianship of two infant brothers of Punaji walad Abaji. It is peculiar that the time-barredness of the five money bonds executed by him to Jethiram is not among the objections preferred by this ryot, whose ignorance of his rights is therefore manifest. Ryots Nos. 46 (*e*), (*f*), (*g*) take objections to agreements in suits Nos. 257, 118, 117, 119 for want of inspection of former accounts, and for sale of their lands generally and for not giving credit to mesne profits of lands taken by the money-lenders, but forget to object that their sowkar is Ramkrishna Mahajan, the brother-in-law of the Conciliator mentioned in the petitions against him. Ryot No. 46 (*i*) similarly forgets to plead with respect to agreement No. 36 that his sowkar is Dado Balkrishna Mahajan, the full-brother of Ramkrishna Mahajan above mentioned. If Subordinate Judges and Village Munsifs (see section 35, last paragraph of Act XVII of 1879), are precluded from adjudging cases of people connected with them by law, Conciliators should be so precluded, though there is an omission to that effect in the chapter on conciliation. I now proceed to comment upon the many defects noticeable in the agreements impeached by the ryots in their own way. As to the denials made by ryots Nos. 9 and 10 of the agreements Nos. 256 and 136, I must say there are two sides to the question that arises from the denial. Both these agreements purport to be signed by the ryots Nos. 9 and 10, but their signatures are made by the kulkarnis of their respective villages whose *dasturs* clearly appear on the agreements. It might be either that the money-lenders, the Conciliator, and the kulkarnis conspired to get up these agreements against unsuspecting and ignorant ryots, or that the ryots denied them because it is now advantageous for them to do so in order to get rid of inconvenient bargains. Both views are possible considering the antecedents of Kotul, but it would be charitable to suppose that five persons did not conspire against two ryots deep in debt. A cursory inspection of agreement No. 256 is enough to discover the following defects: (1) That the Conciliator has created a mortgage on the landed property of the ryots with respect to sowkar's claims on simple money bonds and balances of current accounts; (2) a mere show of a remission of R26 is made, but it does not appear to be *the* result of any careful or critical investigation into the past history and accounts of the parties,—in fact, no such investigation of past history or accounts has been made at all; (3) a benefit is ostensibly created in favour of the ryots by the clause of payment of the moneys due to the sowkar by six instalments, but the said benefit is closely followed by the sting of the provision (*a*) for the sale of the mortgaged lands with the crops standing thereon without any deduction for ryot's labour in rearing those crops even for default of any one instalment; (*b*) and of the provision for preventing the ryots from mortgaging or selling the mortgaged property to other people till the whole period of the six instalments expires. I pass over agreement No. 136 by the mere statement that it is vitiated by (1) want of investigation of past history and accounts, (2) by the stipulation for the enjoyment of the land by the sowkar for the unusually long period of six years, while the ryots are saddled with the payment of the revenue and local fund demands due to Government during the period of the sowkar's long enjoyment.

Agreement No. 245, objected to by ryot No. 12, Tukaram, is bad (1) for want of a certificate of guardianship of the infant Tukaram who is admitted by the Conciliator himself to be fifteen years of age in his deposition No. 45; (2) for want of investigation of past history of transactions or accounts, though for form's sake the Conciliator has remitted only R65-4 out of the total sum of R645; but this remission does not appear to spring from a critical investigation of past history or accounts; (3) for dealing with the property of heirs Gainu and Tukaram of the deceased defendant not in suit, whereas it should have properly disposed of the property of the deceased alone; and (4) for containing a stipulation for the sale of the mortgaged property and for insertion of a stipulation for taking mesne profits of the ryot's lands in lieu of interest contrary to the provisions of the 2nd paragraph of section 22 and the 1st paragraph of section 13.

Ryot No. 13 takes exception to agreement No. 262 for (1) want of inspection of past history and accounts, though for form's sake a remission of R100 is made, which does not appear to be the result of such investigation; (2) for not giving credit to the ryot's delivery of 17 maunds of paddy to his sowkar Jethiram; and (3) for the insertion of a clause for the sale of the ryot's land and of a clause for taking a half of the produce of the land in lieu of interest. I find on inspection of that agreement more defects (4) for the creation of a mortgage for the payment of money demands on simple bonds and balances of current accounts; (5) for the hypothecation of the ryot's lands to the sowkar for as many years as he, the sowkar, likes, and while he enjoys the profits of the land in lieu of interest during such period, thus setting the law of limitation at defiance. With respect to the balances on current accounts generally the Conciliator has deposed that he kept no extracts in his records, so that nothing can be said as to their legality or validity according to section 85 of Schedule II of Act XV of 1877.

This same ryot No. 13 objects to agreement No. 264 for like defects, *viz.*, (1), (3), (4) noticed in relation to agreement No. 262. I find in addition the glaring defect that as the R100, paid by plaintiff Atya Pandu through Jethiram Velchand to his ryot defendant, extend from Shake 1792 till 1802, the greater portion of those rupees become barred by sections 57 and 61 of Schedule II of Act XV of 1877. Now Act XVII of 1879 came into force on the 1st November 1879. Therefore the moneys paid to defendant through Jethiram from Shake 1792 up till Kartik Shudh 15, Shake 1798, corresponding to 1st November 1876, at least become barred by the law of limitation. As the Conciliator has admittedly kept no extracts of accounts current in his records, the exact sum so time-barred cannot be ascertained. In this connection I must suggest that a circular should issue from the Special Judge ordering all Conciliators to file accurate extracts of *khatas* or accounts current sued before them along with other documents in their records.

The ryots Nos. 14 and 15 take the common objections to the agreement No. 267, (1) for want of investigation into past history or accounts, no remission being granted even for form's sake; (2) for the stipulation of sale of land and of taking the produce of it in lieu of interest. On inspection of this agreement, I find another glaring defect of the hypothecation of the ryot's lands for as many years as the sowkar likes, similar to that noticed as defect No. (5) with respect to agreement No. 262.

Ryot No. 16 admitted the agreement No. 263 he passed to Jethiram without objections, notwithstanding the fact that that agreement is open to many of the objections specified with respect to other agreements. The Kotul Bania Jethiram appeared to exercise a mesmeric influence over the ryots of Kotul, and ryot No. 16 in particular who gave his deposition No. 16 under the blighting influence of Jethiram's eye, though I gave him every information regarding his rights under the Deccan Agriculturists' Act. There is some room, therefore, for the anticipation or fear of collusion between debtor and creditor who seem to avail themselves of agreements under section 44 with a view to nullify the equity of sections 12, 13 and 14 and the general policy of the Deccan Agriculturists' Act noticed in section 95 of your report. Jethiram has procured in all 13 very extortionate, and even I may say unconscientious, agreements from his ryots through the agency of the Conciliator. Out of these 13, unfortunately 7 have been filed and the 6 remaining have not been filed. When I went to Kotul, Jethiram probably induced the ryots debtors in agreements Nos. 178, 206, 211 to go to Bombay, and the ryot defendants in agreements Nos. 213, 256, 262 and 245 preferred objections against them, and the remaining six absented themselves though duly summoned, except the ryot in agreement No. 212, who admitted the same without any hitch in my presence, though the fact (*a*) that four notes therein were time-barred, and (*b*) the usual defects of want of inspection of past history and accounts, and (*c*) the stipulations of sale and of taking mesne profits in lieu of interest, and (*d*) of the provision for the recovery of the mortgage debt out of the

property of the heirs instead of that of the deceased, were brought to his notice. This is a second instance of the anticipation and collusion above mentioned. The collusion, however, in both these cases did not appear to spring so much from the voluntary consent of the ryot defendants as from the magical influence exercised by the Bania Jethiram over his ryots—an influence which is akin to that of the lizard over the scorpion.

Ryot No. 49 took the objection to the agreement in suits Nos. 100 and 101, that (1) no inquiry was made into the past history and accounts or the profits of the land taken by his creditor, the celebrated Mr. Ocean (of V. and C.) Hari Baji. I find on inspection the following defects: (2) that no cause of action arises on the bond of Shake 1795, Kartik Wadya 30, as the period of payment is put down at 25 years and the figure of those years seems to be a forgery on a cursory inspection of the bond, which is herewith appended for your notice. (3) The bond of Shake 1799, Chaitra Shudha 15, is under-stamped with a two-anna stamp, as it is a bond for the payment of R9½ and grain, 2 maunds of nágli, as if the bond had been for the grain alone, it would have to be stamped with an eight-anna stamp according to the General Stamp Act XVIII of 1879 which governs the bond. (4) The items of balances of khata are nominally such; they really are loans of Sara due to Government on his lands made by Mr. Ocean to his ryot debtor, and indeed the first four items of the aggregate value of R7-7, being of the Shake year 1795, are barred by sections 57 and 61 of Schedule II of the new Limitation Act. (5) The ryot is precluded from making part-payments to Mr. Ocean of a value below R100. This last provision is peculiar and unnecessarily restrictive of the ryot's liberty to get rid of his debts by driblets.

I must in justice to the Conciliator, however, observe that the large remission of R200 and the absence of the usual stipulation for the sale of the ryot's land and the equitable provision for taking one-fourth share of the mesne profits of land in lieu of interest, though rather illegal, are points in his favour. It is a pity that he did not use such discretion in any of the agreements he framed in Jethiram's 13 cases.

Ryot No. 46 (*a*) takes objection to agreement No. 131 on the plea of (1) want of investigation of past history and accounts. (2) I find on inspection of the same that the mortgage deed, the subject of the plaintiff's suit, being dated Shake 1785, Shrawan Wadya 13, corresponding to September 1863, is completely barred by the old Limitation Act by the lapse of more than 14 years immediately before the new Limitation Act No. XV of 1877 came into force extending the period for bringing such suits to 60 years. It is therefore needless to note down the other shortcomings of this agreement. The mortgage deed is herewith sent for your information.

Ryot No. 46 (*b*) takes exception to the memorable agreement No. 213 for the big sum of R700 for (1) want of inspection of past history and accounts and for failure to give credit to the mesne profits taken by the notable Jethiram; (2) for want of a certificate of guardianship of the two infant brothers of the ryot. These objections the Conciliator has admitted in his deposition No. 45 along with the glaring ones (3) of decreeing a suit founded in part on five time-barred simple money bonds (herewith forwarded for your inspection).

On personal inspection of the agreement I find the following defects: (4) A mortgage of the ryot's house and lands has been created for one legal simple money bond and five time-barred simple money bonds in favour of Jethiram. (5) The Conciliator has hypothecated the (probably ancestral) house of the ryot defendants in the agreement, notwithstanding the fact that no mention of the said house is made either in the plaintiff's plaint or the two mortgage deeds upon which it is based. Such an absorption of the house of those agriculturists is contrary to the provisions of section 266 of Act X of 1877 and certainly in direct opposition to the first paragraph of section 22 of Act XVII of 1879, as the house has not been specifically mortgaged to Jethiram either by mortgage deeds or simple money bonds. (6) For allowing the creditor to recover the balance remaining due to him after the sale of the mortgaged property from other property of the heirs of the deceased ryot defendant instead of recovery from other property of that deceased ryot. (7) For the stipulation of the sale of the ryot's house and lands and that for taking the lion's share of their profits in lieu of interest contrary to the spirit of sections 13 and 22 of Act XVII of 1879. All the agreements procured by Jethiram, and this one in particular, the enormity of which is so glaring and obvious, deserve to be cancelled.

Ryots Nos. 46 (*c*), 46 (*f*), 46 (*g*) take objections to the joint agreement in suits Nos. 118 and 257 and the agreements Nos. 117 and 119 procured by Ramkrishna Mahajan, the brother-in-law of the Conciliator, from them, respectively, generally, for (1) want of investigation of past history and accounts and specially for the want of investigation of the mesne

profits of their lands taken by their creditor hitherto. On a careful perusal of all these agreements I find that they are vitiated by the common defects; (2) of the stipulation for the sale of the ryot's lands; and (3) the stipulation for taking the whole or half of the produce of those lands in lieu of interest contrary to the policy and spirit of the Deccan Agriculturists' Relief Act. The first of these agreements is tainted by the special defect of the creation of a mortgage with respect to a part of the creditor's claim founded on simple money bonds.

Ryot No. 46 (*i*) takes the common objections (1) and (2) specified in relation to agreements above mentioned to the agreements No. 33 procured by Dado Balkrishna Mahajan, the brother of Ramkrishna Mahajan above mentioned, from him. On inspection I find that this agreement is *ultra vires* as the Conciliator had no right to adjudicate on the mortgage of lands situate at Dhandhurphal in the Sangamner Taluka outside of the Akola Taluka for which he has been appointed Conciliator. I herewith append the bond in this case for your information. Ryot No. 46 (*d*) objects to the agreement No. 242 for (1) want of investigation of past history and accounts. On inspection of the same I find (2) that the principal mortgage deed, Shake 1786, Shrawan Shudha 15, of ₨125, and payments of Sara made by the creditor for the debtor ryot from Shake 1786 up till the date of the agreement, except the three years immediately preceding the date of suit No. 242, filed before the Conciliator, are barred by the laws of limitation for reasons stated with respect to agreements previously commented upon for the special defect of time-barredness. This agreement is also tainted by the common defect of the stipulation for the sale of the ryot's land and of the creation of a mortgage of those lands for simple money demands. Ryot No. 46 (*e*) takes objection to agreement No. 182, for (1) want of investigation of past history and accounts, and (2) specially for the fact that the Conciliator, while taking the agreement from him, totally forgot to summon his three full-brothers in order to join in the agreement. It must be noticed with respect to this agreement that it does not appear from the agreement itself or in any way that the ryot 46 (*e*) was the managing member of his united Hindu family. (3) The Conciliator ought to have provided for the recovery of the creditor's claims out of the property of the deceased ryot defendant instead of from the property of the heirs of that deceased ryot. (4) This agreement is also tainted by the common defects of stipulation for the sale of the ryot's lands and the stipulation for taking the produce of those lands in lieu of interest.

Ryot No. 46 (*h*) takes the very peculiar objection of fraud to agreement No. 64. He complains that his creditor recovered twice for the same unit of claim, *i.e.*, plaintiff took a promissory note from one Jivdaji, securing a debt with which he (the ryot No. 46 (*h*)) had nothing to do, but which Jivdaji really owed. Plaintiff took a khata from him for the simple reason that he brought the money from the Bania for Jivdaji. This deposition was given in the presence of the Conciliator, and it appears that this ryot must have taken this plea before him; therefore the wonder is that the agreement was framed notwithstanding the plea so fatal to the plaintiff's claim. I have now finished my comments on the agreements which have been impeached by ryots before me. It would tire your patience to notice all the other agreements which have not been impeached. But I am compelled to notice one more agreement, No. 61, because its inquiry is insisted on in the second petition against the Conciliator. The ryot defendant, Kavji walad Mavji Koli, has not yet taken any steps to impeach the agreement in my presence, either at Kotul or in this Court, though duly called upon by regular notice to do so. I therefore summoned his creditor Dharramchand with his books and took his deposition No. 50. There is some doubt as to plaintiff's statement that his transaction with defendant commenced in Shake 1797, as on looking into plaintiff's ledger for that year I found the words " former khata, page 197 " at the top of the defendant's khata for that year. The plaintiff, it is highly probable, made an intentional misstatement in order to cancel the extortions from defendant in his older khatas previous to Shake 1797. But taking the plaintiff at his word, I find that the Conciliator has dealt rightly between the parties by his remission of ₨12, as even if the accounts of the dealings between the parties be cast up according to section 13 the plaintiff's claim comes up very nearly to what the Conciliator has awarded so equitably in the agreement. The only fault that I find is the delivery of bullocks contrary to the provisions of section 266 of Act X of 1877. In this agreement, therefore, the petitioners have failed to show anything serious against the Conciliator. The most serious and glaring delinquencies of the Conciliator, however, are mostly confined to all agreements founded on mortgage transactions and especially to those procured by the Bania Jethiram. I must, therefore, in consideration of the premises, recommend you to cancel each

and all agreements founded on mortgage transactions, especially those procured by Jethiram in the name of good conscience, equity and law, should the law allow of such a cancellation. And if the law be found inadequate to meet such an emergency, I would humbly request you to get an Act of the Legislature passed to set aside all such agreements. The strongest reason for such a wholesale cancellation remains to be put forth. A mere glance at the private khata of the Conciliator extracted from Jethiram's account book and marked as No. 47 (the translation of which is marked 47 (*a*)) shows that he is indebted to Jethiram to the tune of R310 in the month of Ashvin Shudh 1, Shake 1802, *i.e.*, the current Hindu year. A more careful inspection of the Conciliator's previous khata of Shake 1799 will lead to the discovery of a certainly very suspicious entry of R115 of a *havala* of Pandu walad Bhawani on the credit side, purporting to be made at the Native date of Falgun Wadya 9, Shake 1799, nearly three years ago. This entry is in blacker and fresher ink than the later and genuine entry of R19. Even the sand attaching to the ink of the entry is still felt by the fingers swept across the age. Such is also the case with the entry of the balance of R310 found due to the Bania in the same khata. The entry is made in the name of a man of straw, a mere day-labourer on the field of the Conciliator for a year only, and the *havala* or guarantee of such a man is said to have been taken by the unsuspecting Jethiram for the due payment of R115 by the Conciliator, and the plentiful crop of tobacco reaped in the year of grace 1876, notably a famine year, from the Conciliator's fields, is said to have enabled the hungry man of straw, Pandu Patil, to stand surety to the Conciliator. This Conciliator's case calls up the recollection of a beautiful passage describing the gradual degeneration of the Panchayât system during the early days of British rule in the Deccan, which embellishes the work of that accurate observer of human nature, the author of Pandurang Hari.

I append the affidavits of Jethiram and Pandu Patil, Nos. 54 and 55, for your information, and a scheme of all the agreements furnishing you with every information concerning them. I now close these reports with the remark that the observations which have been made above regarding the private khatas of the Conciliator are simply well grounded suspicions, which may be cleared up by a more convincing explanation or closer investigation.

From A. D. POLLEN, Esq., Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay,—No. 1282, dated Satara, the 29th December 1880.

With reference to paragraph 24 of the statement accompanying my letter No. 1220 of the 14th instant, and to section 12 of the draft Bill therewith submitted, I have the honour to point out an omission in the Bill.

2. I had intended to insert in section 16 a second explanation to section 44, as follows:—

" *Explanation II.*—The refusal to file an agreement shall, for the purpose of section forty-seven, be deemed equivalent to the grant of a certificate under section forty-six,"

and I have the honour to request that this correction may be made in the Bill.

3. I would take this opportunity of suggesting further, with reference to section 47 of the present Act, that some provision should be made in the amending Act to meet the often recurring contingency of cases which are left pending when a Conciliator dies, or resigns, or his appointment is cancelled. In such cases, either the fact of the vacancy in the office should, for the purposes of section 47, be deemed equivalent to the grant of certificate under section 46, or the Subordinate Judge should be empowered to deal with such pending cases as if he were himself the Conciliator before whom they were instituted.

4. I would also recommend the insertion in Chapter VII of a new section as an additional safeguard; which would often operate most beneficially. It might be numbered as section 51A and might run as follows :—

" 51A. The District Judge may also stay the proceedings in any case pending before a Conciliator, and may either deal with such case as if he were himself a Conciliator, or may refer it to the Subordinate Judge having jurisdiction in the place, who shall thereupon perform with respect to such case all the functions of a Conciliator under Chapter VI."

Report by J. R. NAYLOR, Esq., Remembrancer of Legal Affairs,—No. 7, dated Poona, the 3rd January 1881.

The Remembrancer of Legal Affairs begs to refer to his Report No. 5 of this day's date.

2. Some provision seems expedient for the two contingencies contemplated in paragraphs 2 and 3 of Dr. Pollen's present letter, but in the first case it would, perhaps, be preferable

that there should be a remand with a view to a further attempt at conciliation, and in the second it would, in the undersigned's opinion, be better to give the District or Special Judge and their Assistants the power to transfer cases to some other Conciliator.

3. The tendency of the proposal in Dr. Pollen's 4th paragraph is to convert Conciliators into Courts of a grade inferior to the Subordinate Judge's and to regard their proceedings like the formal proceedings of a Civil Court. This appears to the Remembrancer of Legal Affairs to be very undesirable. A general power of transferring cases, when good cause exists, from one Conciliator to another, is all that appears necessary.

From J. POLLEN, Esq., Acting Under Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India,—No. 1216, dated the 24th February 1881. No. 128.

With reference to the Deccan Agriculturists' Relief Act Amendment Bill now under consideration, I am directed to forward to you, for submission to the Government of India, the accompanying copy of the translated substance of a vernacular petition received from certain inhabitants of Taluqa Karjat in the Ahmednagar District, and of a report thereon by the Special Judge, No. 146, dated the 16th instant.

The petitioners have been informed that this Government are satisfied with the manner in which the administration of the law is being watched and scrutinized.

Substance of a petition from VISHNU GOVIND BHANAGE and fifty-six others, inhabitants of Taluqa Karjat, Ahmednagar District, to the Right Honourable the Governor in Council, Bombay,—dated the 20th December 1880. No. 129.

Your Excellency in Council is taking steps to free the agriculturists from debt; but we are subjected to certain losses and inconveniences in connection therewith, as shewn below:—

Our monetary transactions are generally for sums less than R100. Our bodily infirmities, our calling, or other reasons prevent us from appearing in person. The consequence is that our suits are dismissed with costs. If the business connected with these suits is managed through vakils as before, the measure will afford us facilities.

In the event of the non-appearance of the defendant after the issue of a summons to him, a decision should, as before, be passed on evidence.

If twelve years' limit is fixed for the recovery of debts all will be saved (from losses).

Old accounts have not been kept by all persons. As those kept by some persons became useless, after a time they disappeared. The accounts of other persons were damaged by rain water and destroyed. Some accounts were also sold as useless for want of room to keep them in. Government, too, do not keep their old records, but destroy them. How can we then produce old accounts? If this point is taken into consideration, no opinion will be given for the rejection of suits for want of accounts.

S. P. PANDIT,

Oriental Translator to Government.

Report by A. D. POLLEN, Esq., Special Judge under the Deccan Agriculturists' Relief Act,—No. 146, dated the 16th February 1881. No. 130.

The first complaint relates to the exclusion of pleaders in certain cases, and the consequent dismissal of many suits for default. As a matter of fact, however, only thirteen suits falling under Chapter II of the Deccan Agriculturists' Relief Act were dismissed for default in the Karjat Court during the year 1880, and it is probable that most of these suits were abandoned by the plaintiffs themselves in consequence of private compromises. At the same time, there can be no doubt that the exclusion of pleaders has operated harshly in many cases, not only on the sowkars, but also on agriculturists, who are too ignorant to conduct, or even to state properly, their own cases. The hardship is enhanced in Courts when the Subordinate Judges are inclined to take a narrow-minded or too technical a view of their duties. The Special Judge has more than once recommended the removal of the restriction complained of; but, if no change be made in this respect, it should be expressly made part of the duty of every Subordinate Judge to see that helpless and illiterate suitors are not prejudiced by the exclusion of pleaders; and it might be a good thing to appoint a karkun, specially to assist such suitors in drawing up their plaints, applications, etc.

2. To carry out the policy of the Act, it is indispensable that the personal attendance of the defendant should be procured, and, if necessary, compulsorily. It would be a most retrograde step to go back to the old system of *ex-parte* decrees. The second request contained in the petition therefore needs no consideration.

3. The Special Judge has always advocated the extension to all classes of the enlarged period of limitation.

4. Many money-lenders falsely deny the possession of accounts. The enquiry into past accounts is the essential feature of the new Act. If genuine accounts are not forthcoming, the Courts have to decide on the best evidence which the case admits of. The Special Judge and his assistants closely scrutinize all cases in which accounts are taken under the novel provisions of the Act.

From C. G. W. MACPHERSON, Esq., Under Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India,—No. 2468, dated the 16th April 1881.

I am directed to forward to you the accompanying copy* of a letter from the Special Judge under Act XVII of 1879, No. 255, dated the 13th March last, submitting a report containing the statistical information which he has been able to collect concerning the working of the Deccan Agriculturists' Relief Act under his supervision during the year 1880; and to request that, with the permission of the Government of India, you will be so good as to submit the same to the Select Committee of the Supreme Legislature now engaged in the consideration of the Deccan Agriculturists' Relief Act Amendment Bill.

* With a copy of this Government Resolution thereon.

From Dr. A. D. POLLEN, Special Judge under Act XVII of 1879, to the Chief Secretary to the Government of Bombay,—No. 255, dated Camp Kade (Ahmednagar District), the 13th March 1881.

I have the honour to submit a report containing the statistical information which I have been able to collect concerning the working of the Deccan Agriculturists' Relief Act under my supervision during the year 1880.

2. At the beginning of the year there were 24 Subordinate Courts in the four Deccan districts. From the 1st June Government increased the number of Courts to 36, and appointed 12 additional Subordinate Judges, thus establishing a Subordinate Court in each taluka, except in the case of the Sangola and Malsiras Talukas, which were united so as to form the jurisdiction of a single Subordinate Court. In consequence, however, of the startling decrease in the number of suits, Government from the 10th December withdrew 7 of the 12 newly-appointed Subordinate Judges, and placed their Courts under the Subordinate Judges of adjacent talukas. Thus at the end of the year there were 36 Subordinate Courts presided over by 29 Subordinate Judges.

3. Appendix A shows the total number of suits of all kinds (exclusive of transfers) instituted in each one of the thirty-six Courts during the year. It also shows, for the sake of comparison, the number of suits instituted in each of the ten previous years.

4. The names of the newly established Courts are given in red ink* and are placed next below those Courts to which their territorial jurisdiction previously belonged. The statement shows the wonderful decrease in the number of suits instituted in the year under report as compared with previous years. The totals for each district are as follows:—

Name of District.	Number of suits instituted in 1880.	Average of previous ten years.
Poona	3,161	8,072
Satara	2,712	11,155
Ahmednagar	3,469	11,142
Sholapur	2,453	5,737
TOTAL .	11,795	36,106

5. The decrease is most remarkable in those Courts which have jurisdiction over the most purely agricultural populations, and in some Courts it exceeds even 80 per cent.

* Shown in thicker print.

6. In paragraph 12 of my report No. 386 of the 7th June last, I endeavoured to explain at length the causes of this decrease, but since the date of the above report another cause has been at work, namely, the general introduction of the conciliation system, which has settled a number of disputes and has interposed delay in referring to the Civil Courts a large number of other disputes which could not be amicably settled.

7. Of the total number of suits of all kinds instituted during the year in the four districts I have ascertained that no less than 8,249, or 70 per cent. of the whole, fall under Chapter II of the Deccan Agriculturists' Relief Act and therefore under my revisional jurisdiction.

8. I would classify these 8,249 suits according to the divisions adopted in Chapter II as follows:—

	R
Money suits against non-agriculturists falling under clause (W) of section 3	5,055
Other suits against non-agriculturists falling under clause (X) of section 3	206
Suits by agriculturists for accounts falling under clause (A) of section 3	267
Money suits against agriculturists falling under clause (W) of section 3	2,226
Other suits against agriculturists falling under clause (X) of section 3	221
Suits against agriculturists for possession of mortgaged land, or foreclosure or sale, falling under clause (Y) of section 3	175
Suits by agriculturists for redemption falling under clause (Z) of section 3	99
TOTAL	8,249

9. It will be observed that 5,261 out of the 8,249 suits exclusively concern non-agriculturists. The remaining 2,988 are agriculturist cases, an amazingly small number considering that it has to be distributed over 36 Courts.

10. Most of the suits for an account were filed during the last two months of the year, when the notification of the Government of India wholly remitting the institution fee began to be generally known: I expect that there will soon be a still greater increase in the number of such suits, more particularly in the Satara District.

11. The suits under clauses (Y) and (Z) have been very few, mortgagees being deterred by the fear of having to render accounts, and mortgagors by their inability to pay even the reduced court-fees necessary for redemption suits.

12. I have also classified all suits under Chapter II according to their values, showing those under R10, R100, and R500, respectively, and I can give the figures, if required; but I have not thought it necessary at present to encumber this report with all the figures.

13. The Act came into force on the 1st November 1879, and the arrears on the 1st January 1880 of suits falling under Chapter II were 1,102, which, added to the institutions in 1880, gives a total of 9,351 for disposal. Of these, 7,108 were actually disposed of during the year under report, leaving a balance of 2,243.

14. The details of the disposals are interesting, as tending to show how some of the novel provisions of the Act have worked. The following statement shows how these suits were decided:—

7,108 = total disposals.

- 23—Plaint returned.
- 1,251—Dismissed for default.
- 811—Decided *ex-parte*.
- 2,281—Admitted.
- 1,735—Contested.
  - 909—Awarded in whole.
  - 593—Awarded in part.
  - 233—Rejected.
- 27—Abated.
- 968—Withdrawn or compromised.
- 12—Disposed of by arbitration.

7,108

15. In addition to the above details, I would wish to add the following "special particulars":—

12 suits decided by a Bench under the provisions of section 51.
In 4,130 suits the defendants were examined as witnesses under section 7.
In 444 suits the past history of the transactions was investigated under section 12.
In 1,868 suits instalments were allowed.

16. The number of *ex-parte* decisions has fallen from about 90 per cent. under the old system to about 12 per cent. in the year under report, and but for certain misunderstandings on the part of Subordinate Judges at the beginning of the year the percentage would have been still lower. Great difficulty was experienced at first in procuring the attendance of defendants, and even still is occasionally experienced. The position filled by *ex-parte* decisions is now to a great extent occupied by admissions, withdrawals, compromises and dismissals. In the majority of money suits the defendant, when he appears in Court, at once admits the claim and, pleading poverty, asks for an instalment decree. Only 24 per cent. of the decided suits seem to have been contested: and from the comparatively small number of applications for revision, the decisions would appear to have been generally acquiesced in. Instalments have been liberally, but not I think too liberally, allowed.

17. In exercise of our powers of superintendence and inspection, I and my Assistant have examined the records of almost all the decided suits during the year. I have myself visited every Court in the four districts and many of them more than once, and the Assistants have also visited all the Courts in their respective jurisdictions.

18. In exercise of my powers of revision I have taken up 50 decided cases—3 of my own motion, 46 on petition for review, and 1 on reference from my Assistant.

19. In 29 of these cases I upheld the decision of the lower Court, in 7 I reversed or modified, and 14 cases were pending before me at the close of the year, of which 8 have since been disposed of. The Subordinate Judges have, as a rule, done their work well and intelligently, and have sought to carry out the intentions of the Legislature. Full instructions have been given to them from time to time and after each visit of inspection, and all mistakes in procedure, etc., have been pointed out.

20. The Insolvency provisions of Chapter IV of the Act have remained almost a dead letter. Fourteen applications only were made during the year in all the four districts. Eight applications were rejected, most of them owing to default of the applicants. In three cases declarations of insolvency were made, but in no case has the final stage of proceedings been reached. In a few cases the Courts of their own motion directed proceedings to be taken under section 19, but the parties on whose behalf the directions were given would not take the necessary steps to carry on the proceedings.

21. With regard to the executions of decrees falling under Chapter II of the Act, there is nothing noteworthy to remark upon. No occasions have arisen to put in force the provisions of section 22 with regard to the management of judgment-debtors' estates by the Collector, nor does it seem probable that much use will ever be made of the section.

22. A large number of cases have been received and disposed of by Village Munsifs during the year. The following statement shows the amount of work:—

District.	No. of Village Munsifs.	Suits received.	Suits disposed of.	Balance.
Poona	35	568	464	104
Satara	31	709	607	102
Ahmednagar	36	1,632	1,500	132
Sholapur	36	348	295	53
Total	138	3,257	2,866	391

In the Poona District the appointments of Village Munsifs took effect from the 1st May. Forty gentlemen were appointed at first, of whom eight resigned, and three new appointments were made, thus leaving 35 at the end of the year. The appointments in the Satara District took effect from the 1st January. Thirty-one gentlemen were appointed. One died in the year, and his place was filled up. In the Ahmednagar District 36 Village Munsifs were appointed, two of the appointments taking effect from the 1st February and the others from the 1st August. No changes occurred during the year. In the Sholapur District 37 Village Munsifs were appointed from the 1st February 1880; three died and three resigned during the year; five new appointments were made, and thus the number at the end of the year stood at 36.

23. Many of the Village Munsifs had no work at all during the year. Only those appointed for large towns had much work. The three who had the largest number of cases

were the Village Munsifs of Ahmednagar, Bhingar (a village close to Ahmednagar), and Satara, as appears from the following statement :—

	No. of suits received.	No. of suits disposed of.	Balance.
Village Munsif of Ahmednagar	692	632	60
Ditto of Bhingar	593	587	6
Ditto of Satara	321	217	104

24. In about 85 per cent. of the cases tried by the Village Munsifs the claims were admitted, and were generally awarded by instalments. At first many cases were received and disposed of without jurisdiction. There have been, comparatively speaking, very few complaints made against the decisions. Three cases I thought it necessary to refer to the High Court under section 617 of the Civil Procedure Code, and in these the decrees were reversed.

25. The institution of Village Munsifs is generally stated to be popular, and no doubt it is very convenient for small traders and petty shopkeepers in those towns for which such officers are appointed; but it affords no relief to the agricultural classes, for the number of suits by or against agriculturists is almost infinitesimal. Most of the Village Munsifs are respectable and intelligent men, and have done their work and kept their records in a satisfactory manner. Many instances occurred in which plaintiffs have waived considerable portions of their claims in order to bring them within the jurisdictions of Village Munsifs. The expediency of retaining these petty Courts at places where there are Subordinate Courts seem to me to be somewhat doubtful, and it is certain that of all the suits that have been instituted in these Courts, not 5 per cent. would have been instituted in the ordinary Courts had there been no Village Munsifs.

26. The most surprising feature in connection with the working of the Act, especially when considered with reference to the great decrease in the business of the Civil Courts, is the enormous amount of work that has unexpectedly devolved upon the newly-appointed Conciliators.

27. For the Poona District 54 Conciliators were appointed from the 1st May 1880. There were 8 vacancies and 13 new appointments in the course of the year, so that the number stood at 61 at the close of the year.

For the Satara District 85 Conciliators were appointed from the 15th May. Five vacancies occurred and eight new appointments were made during the rest of the year. Thus there were 88 at the end of the year.

For the Ahmednagar District 62 gentlemen were gazetted, most of the appointments taking effect from the 1st July. Eight vacancies occurred and twenty new appointments were made, thus leaving 74 at the end of the year.

Sholapur has the largest number of Conciliators: 123 were appointed from the 1st July. Nine vacancies took place, and an equal number of new appointments made, so that the total number remained unchanged.

28. The following statement shows the total number of applications received and disposed of by Conciliators during the year, the manner of disposal and arrears on 1st January 1881 :—

District.	Number of applications received by Conciliators during the year.	NUMBER OF APPLICATIONS DISPOSED OF								Balance remaining for disposal at end of year.	Number of Certificates under Section 46, actually granted out of the total number of failures shown in column 9.	Court-fees on Agreements and Certificates.	
						CONCILIATION FAILED.							
		Withdrawn by Applicant or compromised.	Struck off by Conciliator for default.	Disposed of by agreement, forwarded to Court under Section 14.	Referred to arbitration and agreement forwarded to Court under Section 46.	By refusal or neglect of opposite party to attend.	By non-agreement of parties.	Total of two previous columns.	Total disposed of.				
1	2	3	4	5	6	7	8	9	10	11	12	13	
												R	a.
Poona . .	16,296	1,440	1,179	2,326	21	3,888	2,097	5,985	10,951	5,3 45	5,256	2,137	3
Satara . .	18,838	1,000	1,234	1,812	132	3,819	2,279	6,098	10,276	8,562	5'047	1,970	2
Ahmednagar .	10,183	579	740	1,894	12	1,212	1,528	2,740	5,965	4,218	2,254	1,193	4
Sholapur . .	3,271	233	124	739	7	451	531	982	2,085	1,186	895	500	9
TOTAL .	48,588	3,252	3,277	6,771	172	9,370	6,435	15,805	29,277	19,311	31452	5,801	2

29. It will be seen that out of 48,588 applications, 29,277 have been disposed of (*viz.*) 11 per cent. by withdrawal or private adjustment, 11 per cent. by dismissal or default, about 24 per cent. by amicable agreements reduced to writing and sent to the Court under the provisions of section 44 or 45 of the Act, and about 54 per cent. by failure of the Conciliator to make any settlement. The highest place is occupied by the failures, out of the total number of which 60 per cent. were caused by the neglect or refusal of the opposite parties to appear before the Conciliators and 40 per cent. by the unwillingness of the parties on appearance to agree to terms. These figures are not, in my opinion, very encouraging, though doubtless some good work has been done.

30. In 13,452 out of the 15,805 cases of failure, certificates under section 46 of the Act were actually applied for and granted—a fact that would seem to imply a prospective increase of litigation.

31. Some of the Conciliators are honest, capable men, zealous, hard-working, of good social position, and above the average in point of intelligence. Others are indifferent and not, so far as I could judge, conspicuous for intelligence, education, social position or influence. Some have had an immense amount of work, more in fact than honorary office-bearers can reasonably be expected to attend to; others have had no work at all or very little. Some have been very successful in effecting amicable settlements; others have done nothing but grant certificates. There are in nearly every taluka, good, bad and indifferent Conciliators. I have personally visited nearly all of them, and have taken notes of their qualifications, but it is extremely difficult to form an accurate and impartial opinion of the character of individuals in the course of an occasional flying visit. In some places I find public opinion to be favourable to Conciliators and to the conciliation system, while in others I learn that the people simply make light of it and pay no heed to the Conciliators' summonses. Some of the best available men for the office are unwilling, it is said, to undertake the irksome and gratuitous labour. I fear, however, that if only the really efficient of the present men were to be retained, there would not be left a sufficient number to carry all the work that would fall to them. During the last two months, however, I have noticed with satisfaction a falling off in the number of conciliation cases, and if this continues, the present strain may be considerably relieved; and I have already made proposals to Government which, if sanctioned, will have the effect of still further diminishing the Conciliators' work.

32. The agreements effected by Conciliators have been subjected to a close and rigid scrutiny: and all the errors and objectionable features have been pointed out to them in a friendly manner in order that similar faults may be avoided in future. I have in previous reports dwelt at length on the dangers attending this system of conciliation agreements in the present state of the law, and have suggested what appeared to me the most suitable remedies, and therefore I do not go over the same ground again in this report. Many of the agreements effected appeared to me to be very fair and equitable; others again were of a negative character and therefore difficult to pronounce upon: but many also seemed to be open to very serious objections. In consequence, however, of the instructions issued by me and my Assistants, there has been of late an improvement in the quality of the agreements; but several Conciliators have told me that if they are strict in requiring equitable agreements, they will not be able to effect so many.

33. In the Poona, Ahmednagar and Sholapur Districts nearly all the applications to Conciliators were made by creditors to recover bond and decree debts. Decree cases are seldom amicably settled: most of the agreements have been made in bond cases, which have generally been settled by the creditor granting partial remission and consenting to accept the remainder of his claims by instalments. In many cases the remissions are merely nominal, but occasionally substantial remissions are granted. Disputes about land are rarely disposed of amicably. In most of the cases settled by Conciliators, I am inclined to believe that the agriculturists, who were parties thereto, would have got more advantageous terms if they had been submitted to the new equitable jurisdiction of the Civil Courts.

34. In the Satara District I was surprised to find that the agriculturists themselves figured largely as the applicants in conciliation cases, demanding accounts and seeking to recover mortgaged lands from their creditors. In the majority of such cases the attempts at conciliation failed, as the sowkars either declined to attend or refused to give any accounts and sometimes the applicants were too poor to pay even the four annas necessary for a Conciliator's certificate. Some, however, of these redemption cases were successfully conciliated; the mortgagee agreeing to give up the land either at once or on the expiration of so many years, varying from 1 to 20, or agreeing to give up part of the land and to retain the rest, and so on. The varieties of form which agreements before Conciliators assume, are almost too numerous to describe.

35. In the Sholapur District the number of conciliation cases is disproportionately small, though the Conciliators are far more numerous than in any other district. This may be partly accounted for by the fact that the pressure of the recent famine was more keenly and generally felt in this district.

36. In the Akola Taluka of the Ahmednagar District the conciliation system had to be discontinued after a short trial owing to the conspicuous unfitness of the Conciliators, and in the Khed Taluka of the Poona District the jurisdiction of the Conciliators was curtailed in consequence of the marked want of success attending the efforts. Eighteen Subordinate Judges were appointed Conciliators during the year, of whom seven were subsequently transferred to other duties. I anticipate that the plan of making Subordinate Judges Conciliators will work well, but I have not yet had sufficient experience to pronounce decidedly on this point. It is too soon as yet to form an accurate or impartial judgment as to the success of the conciliation scheme as a whole. Its success evidently depends (1) on the willingness of the public to avail themselves of the advantages it offers, and (2) on the personal fitness of the men selected for the office. If these conditions are absent, no amount of supervision can make it a success. I think, too, it is to be regretted that the appointments of Conciliators were not made more gradually and tentatively, so as to allow of a cautious and leisurely selection of the very best available men.

37. I had intended in this report to offer some remarks on the registration provisions of the Act and on the manner in which they are being carried out, but as I have not yet received from the District Registrars certain information which I requested to be favoured with, I must refer my remarks to another occasion.

38. With respect to the general policy of the Act and its practical results, the doubts and difficulties in connection with its various provisions, and the remedies that seem necessary to remove them, I have ventured to express my views on various occasions in former reports, and the whole subject is now under consideration. I have also sought to keep Government informed from time to time as to the progress of the conciliation system. I have therefore aimed at confining myself in this report chiefly to giving such statistical information for the past year as I thought likely to be useful or interesting to Government.

APPENDIX A.

Statement showing the total number of suits of all kinds (exclusive of transfers) instituted in each one of the 36 Courts in the Districts of Poona, Satara, Ahmednagar, and Sholapur in each of the ten years from 1870 to 1880.

No.	Names of Courts.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.	1879.	1880.	Remarks.
	Poona District.												
1	First Class Subordinate Judge's Court, Poona	1,093	1,164	1,380	1,555	1,425	1,682	2,589	1,394	1,288	1,266	895	
2	**Subordinate Judge's Court, Sasvad**	...	...	...	...	...	...	...	...	...	...	**162**	
3	" " Khed	1,024	1,059	979	1,246	1,825	1,216	1,724	1,534	1,146	1,307	447	
4	" " Junnar	1,804	1,757	1,973	1,911	1,769	1,782	1,575	1,122	1,092	929	756	
5	" " Vadgaon	...	...	...	...	...	442	1,511	1,235	1,236	858	300	This Cuort was established on 1st August 1875.
6	" " Talegaon	2,213	1,918	2,262	2,632	2,291	1,756	1,465	967	1,313	1,079	258	
7	" " Patas	1,772	1,547	1,729	2,021	1,678	1,507	1,258	795	861	768	305	
8	" " **Indapur**	...	...	...	...	...	...	...	...	...	...	**38**	
	Total	7,906	7,445	8,323	9,365	8,988	8,385	10,122	7,047	6,936	6,207	3,161	
	Satara District.												
9	First Class Subordinate Judge's Court, Satara	2,158	1,818	2,204	2,114	1,969	1,774	1,850	1,538	1,340	1,369	609	
10	Subordinate Judge's Court, Wai	2,212	1,672	1,737	1,961	1,411	1,405	1,366	1,037	770	968	278	
11	" " **Medha**	...	...	...	...	...	...	...	...	...	...	**21**	
12	" " Karad	2,148	1,735	1,876	2,007	1,908	1,623	1,701	1,209	831	955	312	
13	" " **Patan**	...	...	...	...	...	...	...	...	...	...	**54**	
14	" " Rahimatpur	1,897	1,660	1,629	1,630	1,401	1,599	1,481	1,157	1,042	1,228	341	
15	" " Ashta	1,482	1,646	1,523	2,068	1,502	1,588	1,626	1,168	1,410	1,279	317	
16	" " Tasgaon	1,198	966	1,013	1,254	979	1,001	848	640	1,135	907	324	
17	" " Vita	2,011	1,614	1,239	1,767	1,386	1,377	1,060	674	592	538	223	
18	" " Dahivadi	1,456	1,450	1,468	1,508	1,069	1,213	733	633	652	495	107	
19	" " **Khatav**	...	...	...	...	...	...	...	...	...	...	**126**	
	Total	14,562	12,561	12,689	14,309	11,625	11,580	10,665	8,056	7,772	7,739	2,712	

No.	Court												Remarks
	Ahmednagar District.												
20	First Class Subordinate Judge's Court, Ahmednagar	4,003	3,638	4,087	4,063	3,213	3,168	3,149	3,101	2,711	2,499	1,435	
21	Subordinate Judge's Court, Parner	...	...	...	...	...	...	...	...	...	...	121	
22	" " Saugamner	2,676	2,468	2,907	2,785	2,814	2,648	2,305	1,693	1,038	1,034	477	
23	" " Akola	...	...	...	...	...	...	...	...	...	...	119	
24	" " Nevasa	2,553	1,857	2,101	2,296	1,950	1,990	1,674	1,206	915	1,028	269	
25	" " Shrigonda	...	...	...	...	...	...	...	26	808	381	89	This Court was established on 1st December 1877.
26	" " Kade	2,153	1,594	2,341	2,319	1,954	1,674	1,388	780	1,337	868	198	
27	" " Karjat	...	...	...	...	...	...	...	...	...	...	88	
28	" " Shevgaon	...	...	...	...	...	...	...	...	...	...	205	
29	" " Rahuri	3,024	1,932	1,941	2,325	2,614	2,248	2,028	1,246	1,341	1,534	216	
30	" " Kopargaon	...	...	...	...	...	...	...	...	...	...	252	
	TOTAL	14,409	11,489	13,377	13,788	12,545	11,728	10,544	8,052	8,150	7,344	3,469	
	Sholapur District.												
31	Subordinate Judges' Court, Sholapur	1,963	1,961	2,595	2,553	2,208	2,273	1,781	1,593	2,085	1,869	1,262	
32	" " Barsi	1,407	1,144	1,493	1,203	1,155	1,072	975	778	917	785	302	
33	" " Madha	1,798	1,372	1,801	1,679	1,302	1,422	1,221	845	1,016	609	208	
34	" " Karmala	...	...	...	...	...	...	...	...	...	...	122	
35	" " Pandharpur	1,560	1,121	1,379	1,624	1,149	1,525	1,199	820	1,144	982	461	
36	" " Sangola and Mallsiras	...	...	...	...	...	...	...	...	...	...	98	
	TOTAL	6,728	5,598	7,266	7,059	5,814	6,292	5,176	4,036	5,162	4,225	2,453	

A. D. POLLEN,
Special Judge.

Extract from the Proceedings of the Government of Bombay, in the Judicial Department,—No. 2467, dated Bombay Castle, the 16th April 1881.

READ—

Letter from the Special Judge under Act XVII of 1879, No. 255, dated 13th March 1881, submitting a report containing the statistical information which he has been able to collect concerning the working of the Deccan Agriculturists' Relief Act under his supervision during the year 1880.

RESOLUTION.—Government have read this important report with much interest.

2. It contains valuable statistical information as to the working of the Deccan Agriculturists' Relief Act during the year 1880, and sets forth results of that measure so far as they have as yet been ascertained.

3. The first point calling for notice is the remarkable decrease in the number of suits instituted during 1880 as compared with the average of the previous ten years.

4. This decrease, Dr. Pollen states, is most remarkable in those Courts which have jurisdiction over the most purely agricultural populations, and amounts in some Courts to even 80 per cent.

5. In the four districts to which the Act applies, 11,795 suits in all were instituted in 1880, as compared with an average of 36,106 in each of the ten preceding years.

This decrease Dr. Pollen attributes—

(1) to the enlargement or extension of the period of limitation;

(2) to the uncertainty produced in men's minds as to the scope and probable effects of the new law;

(3) to the exclusion of pleaders and consequent compulsory personal attendance with its concomitant trouble and loss of time; and

(4) lastly to the general introduction of the conciliation system through which suits must pass before they can be received in Court.

6. Out of the total number of 11,795 suits instituted, only 8,249 fell under the Act and the revisional jurisdiction of the Special Judge, and of these only 2,988 were purely "Agriculturist Cases."

7. Out of the 8,249 cases falling under the Act (together with the arrears of last year) 7,108 cases were actually disposed of during the year under report.

8. Of these only 811 cases were decided *ex-parte* showing a fall in the number of *ex-parte* decisions of from about 90 per cent. under the old system to about 12 per cent. in the year under report; but the place formerly filled by *ex-parte* decisions is now occupied by admissions, withdrawals, compromises, and dismissals (of which there were 4,473 out of the total number of cases disposed of).

9. "In the majority of money suits," writes Dr. Pollen, "the defendant when he appears in Court at once admits the claim, and pleading poverty, asks for an instalment decree."

10. The chief result then of compelling the defendant to appear seems to be that he at once admits the claim.

11. Not less remarkable is the complete inoperativeness of the provisions of the Insolvency Chapter. The Deccan ryot apparently declines to be declared insolvent.

12. In the same way the institution of Village Munsifs to dispose of petty cases has not benefited in any appreciable degree the agricultural population for whose special benefit it was intended.

13. The institution is no doubt very convenient for traders and petty shopkeepers, but Dr. Pollen says it is certain that of all the suits instituted in these Courts, not 5 per cent. would have been instituted in the ordinary Courts had there been no Village Munsifs.

14. In striking contrast to the decrease in the work of the Subordinate Judges is the increase in the work of the Conciliators.

This would be a most encouraging sign did not the result of the work of the Conciliators point to a great prospective increase in litigation.

Thus out of the 48,588 applications made to Conciliators, 29,277 have been disposed of, but of these 13,452 have been disposed of in such a way as to make it almost certain that the claims will ere long come before the Courts for adjudication.

15. At the same time Government note with satisfaction that 6,771 (or about 24 per cent.) of the applications have been disposed of by amicable agreements, and that so far conciliation has been successful, provided the agreements are really equitable.

16. Dr. Pollen speaks highly of some of the Conciliators, but, as was to be expected, there are in every taluka good, bad, and indifferent Conciliators, some of the best men being unwilling to undertake the irksome and gratuitous labour involved.

17. Future appointments of Conciliators should, as Dr. Pollen suggests, be made gradually and tentatively so as to allow of a cautious and leisurely selection of the very best available men who are willing to act.

18. It is to be regretted that, owing to the non-receipt of the necessary reports from the District Registrars, Dr. Pollen has been unable to offer remarks on the village registration provisions of the Act, particularly as these provisions form a most important feature of the remedial legislation and were specially designed to provide some safeguards against the money-lenders committing frauds by obtaining from ignorant peasants bonds for larger amounts than were actually paid to or due from them.

19. Government observe with approval that Dr. Pollen has visited every Court in the four districts and many of them more than once, and that his Assistants have also visited all the Courts in their respective jurisdiction, and that nearly all the Conciliators have been similarly visited.

20. Copy of this report should be forwarded to the Government of India for submission to the Select Committee of the Supreme Legislature now engaged in the consideration of the Deccan Agriculturists' Relief Act Amendment Bill.

(True Extract.)

C. G. W. MACPHERSON,

Under Secretary to the Government of Bombay.

To

The Commissioner, Central Division.
The Special Judge under Act XVII of 1879.
The District Judges of Poona, Ahmednagar and Satara.
The Collectors of Poona, Sholapur, Ahmednagar and Satara.
The Inspector General of Registration and Stamps.
The Government of India (by letter).
The Revenue Department.

From F. C. DAUKES, Esq., Under Secretary to the Government of India, to the Secretary to the Government of Bombay,—No. 1082, dated Simla, the 19th August 1881. **No. 135.**

In connection with the Bill to amend the Deccan Agriculturists' Relief Act, 1879, which is at present under the consideration of His Excellency the Governor in Council, I am directed to invite attention to paragraph 19,* section IV of the Report of the Indian Famine Commission, in which a modification of that Act is suggested in respect of the provision which, in the case of land specifically mortgaged, necessitates its alienation, temporary or permanent, from the management of the mortgagor. The Governor General in Council would be glad to be favoured with the views of the Bombay Government upon this suggestion.

* Extract forwarded herewith.

Extract, Paragraph 19, Section IV, Chapter III of Part II, of the Report of the Indian Famine Commission. **No. 136.**

We advocate, however, one modification of the Bombay Act in respect of the provision which, if the land has been specifically mortgaged, necessitates its alienation, temporary or permanent, from the management of the mortgagor. This provision is severer than that of the amended Civil Code under which the Collector may liquidate a decree by managing the land, for a term not exceeding 20 years through another; that "other" being, if the Collector thinks fit, the mortgagor himself who may then be kept on as the cultivator of the land. If the debtor is turned out and the land is let to another person for a term of years at the expiry of that term the debtor will re-enter with no increased sense of the importance of thrift, but with additional incapacity through the disuse of years, for managing the land. We therefore recommend that in all such cases the principle should be followed of paying off the debt by instalments, the land remaining in the hands of the debtor, and being managed by him on payment of a full rent, the excess of which above the revenue would go towards the liquidation of the debt; such payments being collected from him by the Revenue Courts, along with the land revenue and being made over every half year to the creditor. In the event of the debtor's failure to carry out such an arrangement and to pay the instalments thus fixed unless he is prevented by drought or any other exceptional calamity, he should be ejected and his rights in the holding sold, when it may be hoped that it would be replaced by a better and more thrifty man.

No. 137. *Extract, Paragraph 5, of a letter from the Government of Bombay, to the Secretary to the Government of India, Legislative Department,—No. 6219, dated the 21st September 1881.*

5. In conclusion I am desired to say, with reference to Government of India's letter No. 1082 of 19th August 1881 (Home Department), forwarding Extract from the Report of the Indian Famine Commission, Part II, Section IV, paragraph 19, that Government are of opinion that the proposal is deserving of a trial, but consider the other amendments in the Bill and those above suggested so necessary that they would not imperil its passing at an early date by insisting on the proposal in question.

No. 138. From H. F. Aston, Esq., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India,—No. 2988-A., dated Bombay Castle, the 13th May 1882.

I am directed to forward to you, for submission to the Government of India, the accompanying copy of a letter from Dr. A. D. Pollen, Special Judge under Act XVII of 1879, No. 60, dated 4th February 1882, submitting a report for the year 1881, concerning the operation of the Deccan Agriculturists Relief Act in the four districts to which it applies, *viz.*, Poona Satara, Ahmednagar, and Sholapur.

A copy of the Resolution (No. 2988, dated 13th May 1882), recorded by this Government on the above report, is also herewith forwarded.

No. 139. From Dr. A. D. Pollen, Special Judge under Act XVII of 1879, to the Secretary to the Government of Bombay, Judicial Department,—No. 60, dated Camp Sholapur, the 4th February 1882.

I have the honour to submit a report for the year 1881 concerning the operation of the Deccan Agriculturists' Relief Act in the four districts to which it applies, namely, Poona, Satara, Ahmednagar, and Sholapur.

Subordinate Courts.

Number and constitution of Subordinate Courts.

2. There are 36 Subordinate Courts in the four districts presided over by 28 Subordinate Judges. Eight of these Subordinate Judges have charge of two Courts each, holding their Courts in adjacent talukas alternate months. In the Poona District the Subordinate Judges of Talegaon and Vadgaon are employed for a considerable portion of the year in assisting the First Class Subordinate Judge of Poona, and similarly in the Ahmedanagar District the Subordinate Judge of Shrigonda is chiefly engaged in assisting the First Class Subordinate Judge of Nagar. Besides the above, there are two additional Joint Subordinate Judges deputed to assist the First Class Subordinate Judges of Nagar and Satara respectively, so that in all there are 30 Subordinate Judges employed in judicial work in the four districts. There is one Court for each taluka, with the exception of the Sangola and Malsiras talukas which are within the jurisdiction of a single Court.

Number of suits filed in the year.

3. Appendix A shows the number of new suits of all kinds filed in each Subordinate Court during the year, as compared with the previous year, and the average of the ten preceding years. The totals for each district are as follows :—

District.	Number of Suits instituted in 1881.	Number of Suits instituted in 1880.	Average of previous ten years.
Poona	4,723	3,161	8,072
Satara	4,501	2,712	11,155
Ahmednagar	4,337	3,469	11,142
Sholapur	2,981	2,453	5,735
Total	16,542	11,795	36,106

Comparison with previous year.

4. It will be seen that there has been a very decided increase in the number of suits filed during the year under report, as compared with the year 1880; and that this increase is pretty general in all the Courts of the four districts, and that in some Courts the number has more than doubled. The large number of account and redemption suits instituted during the year does not sufficiently account for the increase, which must be attributed to a general and gradual reaction from the abnormal condition of things prevailing in the previous year. This, I think, sufficiently disposes of the idea that there has been anything in the nature of a permanent scare, produced by the operation of the Relief Act, among those who were in the habit of resorting to our Courts. It is true that the number of suits still falls very far short of the

average of the previous ten years, but this may now, I think, be ascribed without any hesitation to two principal causes—first and mainly, to the conciliation system, which intercepts in its initial stages a vast amount of threatening litigation; and, secondly, to the enlargement of the limitation period. The decrease may still also perhaps be due in some slight, but in a very slight, degree to the distrust and uncertainty produced by some of the novel provisions of the Act. The preponderating effect, however, of the conciliation system in this direction will be apparent from the statistics of the system itself hereinafter given; but it may also be judged from the figures in Appendix D regarding the work in those talukas in which the conciliation system was discontinued during the year 1881. In such talukas the work of the Courts has more than doubled. The Khed taluka of the Poona District, in which the conciliation system was abolished early in 1881, furnishes a very striking instance. In the Khed Subordinate Court the number of suits rose from 447 in 1880 to 1,189 in 1881—which figure is nearly equal to the average of the five years preceding the passing of the Act. It may be said, therefore, when the number of suits filed during the year is considered in connection with the number of cases settled by conciliation, that the litigation of the year has almost recovered its normal proportions, and that in this respect the disturbing effects of the Act have been much exaggerated and are in reality comparatively insignificant.

Number of suits falling under Chapter II.

5. Of the total number of new suits of all kinds instituted during the year in the four districts, no less than 11,607, being a proportion of 70 per cent., fall under Chapter II of the Deccan Agriculturists' Relief Act, and therefore within my revisional jurisdiction. My remarks will for the most part be confined to these suits.

Classification of such suits.

6. Following the plan adopted in my last year's report, I would classify these suits as follows, according to the divisions specially made use of in Section 3 of Chapter II:—

Money suits against non-agriculturists falling under clause (w) of Section 3	5,831
Other suits against non-agriculturists falling under clause (x) of Section 3	256
Suits by agriculturists for accounts falling under clause (a) of Section 3	839
Money suits against agriculturists falling under clause (w) of Section 3	3,343
Other suits against agriculturists falling under clause (x) of Section 3	315
Suits against agriculturists for possession, foreclosure, or sale of mortgaged property falling under clause (y) of Section 3	290
Suits by agriculturists for redemption of mortgaged property falling under clause (z) of Section 3	733
TOTAL ...	11,607

Agriculturist and Non-agriculturist Cases.

7. The above statement shows that out of a total of 11,607 suits, 6,087 suits exclusively concerned non-agriculturists, and that the purely agriculturist cases numbered 5,520, or about 47½ per cent. of the whole. In 1820 the suits under Chapter II came to 8,247, of which purely agriculturist cases formed only about 36 per cent. These figures tend to corroborate the views expressed above in my 4th paragraph. The definition of the term "agriculturist" has recently been amended by Act XXIII of 1881, and this amendment will undoubtedly have the effect of largely augmenting in the present year the number of agriculturist cases, and of diminishing proportionately the number of non-agriculturist cases.

Suits for Account.

8. At the beginning of the year there were 214 suits for account pending in the Subordinate Courts. Nearly all of these had been instituted during the last two months of 1880, soon after the issue of the Notification by the Government of India remitting the institution fee in such suits. During the first few months of the year under report there was a perfect rush to the Courts of agriculturist debtors eager to demand from their creditors statements of account to be investigated and ascertained according to the equitable provisions of the Act. But in the month of May this rush received a sudden and unexpected check. A bombshell was thrown into the camp of the eager account-seekers in the shape of a decision of the Bombay High Court to the effect (1) that in mortgage cases the remedy by way of a simple account suit under section 16 was inapplicable, and (2) that in mortgage cases permission to pay by instalments could not be allowed to the debtor. This decision was the cause of a rude shock and of keen disappointment to the people generally. Before it was made known no less than 827 new suits for an account had been filed by agriculturists in the four districts during the early months of the year; but in all these cases, with the exception of only 15, the transactions of which accounts were sought were mortgage transactions. After the ruling became known only 30 suits for an account were filed during all the rest of the year. On this subject I had occasion to address several letters to Government, and I urged as strongly as I could the necessity of amending section 16 so as to overcome the difficulty. The section

has unfortunately not been amended, and it will now, I regret to say, remain almost wholly inoperative. I have urged my views so often and at such length on this question, that it seems unnecessary now to refer to it further than to say that a change in the law in the direction indicated would be eagerly welcomed by all classes of the indebted ryots. The account suits were most numerous in the Satara District, as will be seen from the marginal statement, the Ashta Court in the Vlava Tàluka having the highest number, 92, while in five Courts no suits at all of this nature were instituted.

Poona	189
Satara	423
Ahmednagar	188
Sholapur	57

9. It was at one time thought that, as far as mortgage cases were concerned, the remedy by a suit for redemption would be equally suitable and effectual as the remedy by a suit for account; and as the great poverty of the people was one of the principal obstacles to their bringing such suits, the Government of India was moved to remit the institution fee in redemption suits, which it was pleased to do: and the remission was accordingly notified about the 4th of August last. Up to this time only 252 redemption suits had been filed during the earlier months of the year. After the remission became generally known no fewer than 1,218 redemption suits were filed during the rest of the year. The cause of this rapid increase was compound—namely, the remission of the institution fee on plaints coupled with the decision of the High Court as to account suits alluded to in the previous paragraph. Neither of these factors working by itself would have sufficed to produce the result, because, but for the High Court decision, the suit for simple account would have been preferred to the redemption suit as being more appropriate and less risky. I shall have occasion to allude further to this subject in another paragraph. From the marginal statement it will be observed that redemption suits were most numerous in the Satara District. The Ashta Court stands highest with 173, and in five Courts the number of such suits did not exceed ten. About 200 of the new redemption suits are only account suits converted into redemption suits by amendment of the plaints. It should be noticed here that, while *all* account suits irrespective of their pecuniary value or limit fall under Chapter II, redemption suits only fall under that Chapter when the amount of the mortgage money does not exceed R100 (or R500 if instituted in the Court of a first Class Subordinate Judge). Of the total number of redemption suits filed during the year only half fall under Chapter II, all the rest coming within the appellate jurisdiction of the District Judges. The work of the lower Courts, therefore, in disposing of the moiety of such suits, will not come under my observation.

Redemption Suits.

Poona	193
Satara	834
Ahmednagar	332
Sholapur	111
	1,470

10. The number of suits by mortgagees against their agriculturist debtors for possession, foreclosure or sale of mortgaged property, under clause (*y*) of section 3, is extremely small, though there is an increase when compared with the previous year; but when we consider the enormous number of mortgages existing in the four districts, the paucity of such suits is very significant. The creditors do not sue as long as their security is good and the profits of the mortgaged land cover the interest. They are content to wait till their title becomes absolute by efflux of time. They are, moreover, unwilling to run the risk of having their claim reduced by an investigation of the account under section 12. It may be inferred that they have made very advantageous bargains and that the proceeds of the land in most cases exceed the annual interest which the Courts would award as reasonable.

Suits by Mortgagees.

11. The provisions of Chapter II may be made applicable by the consent of the parties to suits of the specified descriptions, which exceed R100 but do not exceed R500 in value, when instituted in the Court of a Second Class Subordinate Judge. It is interesting, therefore, to notice in how many cases advantage has been taken of this permission. I find that only in 143 cases was the consent of the parties given to such suits being tried under Chapter II; of these, 111 instances are furnished by five Courts, so that the average for the remaining 31 Subordinate Courts is little more than one for each Court. By electing to make Chapter II applicable the parties are saved some expense in the shape of Court-fees, but they lose the right of appeal. The smallness of the number of consent cases is attributed by the Subordinate Judges partly to the ignorance of the people and partly to an unwillingness on the side of the creditors to forego the right of appeal.

Suits to which Chapter II is made applicable by consent of Parties.

12. On the 1st January 1881 the arrears of suits falling under Chapter II were 2,071; which, added to the institutions in 1881, gives a total of 13,718 for disposal. Of these 10,060 were actually disposed of during the year under [illegible] Appendix B

Disposal of Suits falling under Chapter II.

shows exactly how the suits, classified according to their several headings, were disposed of. The following statement gives a general view of the manner in which the suits were disposed of :—

10,060—Total disposals—
- 50—Plaint returned.
- 1,620—Dismissed for default.
- 595—Decided *ex-parte*.
- 2,629—Admitted.
- 3,085—Contested.
  - 1,572 awarded in whole.
  - 1,085 awarded in part.
  - 428 rejected.
- 80—Abated.
- 1,842—Withdrawn or compromised.
- 6—Disposed of by arbitration.
- 153—Transferred or converted.

10,060—Total disposals.

13. In addition to the above details I would add the following special particulars relating to the disposal of suits under Chapter II :—

Special Particulars.

In four suits the trial was held by a Bench under the provisions of section 53.

In 6,275 suits the defendants were examined as witnesses as provided in section 7.

In 796 suits the past history of the transaction was investigated, as required by sections 12 and 13.

In 2,557 suits instalments were allowed under section 20.

Ex-parte Decisions.

14. It will be observed with satisfaction that the number of *ex-parte* decisions which last year had fallen from about 90 per cent. to about 12 per cent. has this year fallen to 5·9 per cent.—a result which shows that section 7 of the Act has been scrupulously observed by the lower Courts. The Subordinate Judges, many of whose views on other points are widely divergent, are unanimous in the approbation which they accord to the provisions of this section which renders the personal attendance of the defendant compulsory, and thus facilitates the fair decision of the suit. Defendants are still very often recalcitrant, and cause much trouble and delay to the Courts; but on the whole they are beginning to realize the advantages of their personal attendance and are showing more willingness to attend at the first summons. It will be seen that the number of personal examinations of defendants more than covers the total number of admitted and contested suits. In my opinion section 7 has proved an unmixed advantage.

Dismissals, Withdrawals and Compromises.

15. The suits dismissed for default and those disposed of by withdrawal or compromise amount to nearly 35 per cent. of the total disposals; and it may be inferred that in the majority of these cases the parties amicably settled their disputes out of Court. Whenever consent decrees were passed in the terms of a compromise, the Courts having the parties before them, were generally able to ascertain and always endeavoured to ascertain that both sides thoroughly understood the nature of the compromise.

Claims admitted.

16. About 26 per cent. of the claims were admitted by the defendants on their appearance. In the case of suits to which section 12 of the Act was applicable, the Courts had to satisfy themselves that the admissions of the defendants were true and made with a full knowledge of their rights. This useful provision excludes collusive and involuntary admissions, and is found to work well in practice.

Contested Suits.

17. The percentage of contested suits has risen from 24 in 1880 to 30 in the year under report. This rise is due partly to the increase in account and redemption suits which are almost invariably contested, and partly to the gradually increasing knowledge of the agriculturist debtors concerning their rights and the remedies provided by the Act. In the case of claims on simple money bonds against agriculturists, the usual defence is an admission of the execution of the bond sued upon, coupled with the plea that the consideration consisted of old debts and the offer to pay whatever may be found justly due, after an examination of the account, by easy instalments. In such cases the provisions of sections 12, 13 and 14 are brought into full operation. It will be seen that in 796 suits the past history of the transactions between the parties was investigated in the manner contemplated by these sections. This part of the Act has on the whole been worked in an intelligent and satisfactory manner, and the results have been subjected to minute supervision. The general effect of the application of these very important sections is to reduce the creditors' claim, sometimes slightly, sometimes considerably. There has been no violent or radical change. Debtors are not unfrequently disappointed with the small results in their favour, and creditors on the

whole are fairly satisfied. My Assistant, Mr. Ranade, has made careful calculations in the case of 193 suits to which the sections under discussion were applied, and he finds that the claims as set forth in the plaint (amounting to ₹8,373-8-3) were, after investigation of the back history of the transaction and after the taking of an account in the manner prescribed, reduced to ₹6,182-14-4, the reduction averaging only 26¼ per cent. The application of these sections is easy enough in simple cases, but in many instances is attended with difficulties to which I have alluded in former reports. The chief blemish brought to light by the working of this part of the Act is that the particular mode of taking the account is more favourable to the dilatory and dishonest debtor than it is to one who has been punctual in his payments and straightforward in his dealings. Notwithstanding the above drawback, the Subordinate Judges all speak in the highest terms of the general operation of the three sections referred to; and I fully share their opinions, regarding, as I do, these sections as being the most important and successful part of the whole Act.

Instalments.

18. Section 20 is another most useful and important section, though it has been shorn of a large proportion of its usefulness by the decision of the High Court already referred to that it is not applicable to mortgage transactions. The lower Courts have granted instalments in 2,557 suits during the year. Such instalments are not granted recklessly. Generally speaking, an issue is laid down as to whether the particular case is a proper one for such an indulgence, and inquiries are made as to the debtor's circumstances. This provision of the law is very popular; and it is, I think, greatly to be deplored that mortgage-debtors have been deprived of its advantages.

Disposal of Account Suits.

19. Very few account suits were disposed of before the date of the High Court ruling. Most of them had first of all to stand adjourned pending the registration of old mortgage deeds under section 71 of the Act: and then, when the ruling was published, they could no longer be proceeded with as account suits. The people then became thoroughly disheartened. They could not understand why a debtor, whose debts were heavy and secured on his land, should not be allowed to sue for an account as well as a debtor whose debts were unsecured. The equities seemed to them the same in both cases. The petitions I received on this subject were numerous and painful. Many of the account suits were allowed to be struck off for default: 262 were disposed of in this way. More than 400 were withdrawn with permission to bring new suits in the form of redemption suits. Others were converted into redemption suits by amendment of the plaints. Only 146 were disposed of on the merits before the High Court ruling became known; and, out of these 15 were decided in favour of the plaintiff and 60 were rejected. I anticipate that in future no more account suits will be instituted In the case of simple bond debts such suits are of no advantage to the debtors, as they prefer to wait until their creditors make the first move, when the accounts will be taken by the Court. The only people who really stood in need of the relief afforded by section 16 were the mortgage-debtors. The secured debts of the ryots largely outnumber the unsecured debts, and exceed them in importance. Most of the valuable land in the country is held in mortgage. It would have been a real boon to the people, if, without running the risk of a redemption suit they could have ascertained by means of a simple account suit the existing state of the indebtedness under the operation of sections 12—14. The ruling of the High Court thus gave a serious blow to the popularity of the Act.

Disposal of Redemption Suits.

20. After a time a ray of hope and light was let in upon the people by the remission of the Court-fees in redemption suits; but it too was soon dimmed. The impetus given to the institution of such suits soon received a check. Very few redemption suits, it is true, have yet been decided on the merits. Most of them have been delayed by the same cause which delayed the disposal of account suits, namely, the compulsory registration of old mortgage deeds under section 71. But some 113 redemption suits were decided during the year, of which 79 were given in favour of the agriculturist plaintiff. In these cases the provisions of sections 12, 13 and 14 regarding accounts were duly applied, but with greatly varying results in different cases. In some cases the original mortgage debt was found to have been altogether cleared off out of the profits of the mortgaged lands, and the lands were restored without encumbrance to their rightful owners. In other cases the amount of the mortgage-debt was considerably reduced and the balance found due by the plaintiff was so small that payment and redemption became easily within his reach. But in other cases

again the result of the account showed that the mortgage money was not reduced at all or only slightly reduced, and that a considerable balance remained due by the plaintiff. In such cases it is usual for the Courts following the practice of the High Court to decree that the amount so found due be paid by the plaintiff within six months, or in default of such payment that the plaintiff's right to redeem be for ever foreclosed. It often happens that the plaintiff is utterly unable to pay or to raise the amount due within the specified period, and the result therefore of the decree in the redemption suit is to deprive him for ever of his dearly prized ancestral land, which he would otherwise have been free to redeem at any time within the unexpired period of the sixty years allowed by the Limitation Law, and which the recurrence of perhaps one exceptionally favourable harvest, combined with high prices, might some day or other enable him to recover. His last state is thus worse than his first. The ryots have in fact taken a fresh alarm. It is impossible for them to foresee with any approach to accuracy the probable result of the difficult and complicated process of taking accounts, so that they are left in doubt as to the amount that they may be called upon to pay. They cannot tell whether redemption will be within their pecuniary reach or not; whether they will get back their land unencumbered without payment, or whether their rights to redeem will become foreclosed. Frequent complaints have been made to me on this subject, and petitions have been also addressed direct to Government. I have recently had occasion to submit to Government a very able letter from Mr. Ranadé regarding this question; and I have also submitted a case to the High Court for an authoritative ruling on the point whether, according to the present law, it is necessary to insert the foreclosure clause in redemption decrees in the case of ordinary Deccan mortgages. Owing to the causes now discussed many redemption suits have been withdrawn or compromised. The creditors are sometimes willing to compromise for fear lest they may lose their hold upon the land and the debtors for fear of being foreclosed. All this difficulty would have been avoided had section 16 been held applicable to mortgage transactions or had it been amended in the manner suggested by me several times last year. The number of redemption suits still pending is very large. In one Court five-sixths of the whole work consists of redemption cases. It is to be hoped, therefore, that the questions which have been raised will soon be settled in a favourable manner. Independently of the special difficulty to which I have been just alluding, there are some other difficulties in connection with the disposal of redemption suits which merit a passing notice. Many redemption suits have been filed in which the mortgage money is said to have been less then R100; but, as the registration of mortgage bonds for less than R100 was not compulsory, there is no record of the transaction if the creditor chooses to deny the fact of the mortgage and to keep back the original deed. It is said that this is sometimes done, and in such cases it is for the plaintiff to establish a *primá facie* case, which he is often unable to do. He has been told by his father that the land in question is mortgaged, and it may even be notorious in the neighbourhood that such is the fact; but the plaintiff having only hearsay evidence to rely upon, is not able to establish the fact of the mortgage by legal proof, and, as a consequence, his claim is rejected. I have been told that such cases have happened. The ignorance of the debtor and the want of legal assistance and advice as to the kind of evidence he ought to adduce are serious impediments in the way of his success. The appointment of a salaried pleader in each Court for pauper agriculturists is a want that has much made itself felt since the introduction of the Act, and that will, I trust, some day be supplied. In the majority of redemption suits the greatest difficulty that presents itself is the determination of the net profits enjoyed by the mortgagee during his term of possession. As a rule the mortgagees keep no accounts, and the conditions of the contracts generally absolve them from the legal necessity of keeping them. But now the law requires the Courts to take an account of the rents and profits on the one hand and of the interests and other charges on the other. Both sides produce a swarm of witnesses who give the most contradictory and irreconcileable evidence as to the amount of gross profits and as to the expenses of cultivation. The Courts for the most part are without any standard by which to estimate the profits; and they are forced either to adopt some arbitrary standard or to fall back on mere guess-work. Sometimes they issue a commission to view the land and the standing crops, if any, and to form an estimate therefrom; but these commissions involve the parties in much expense, and after all their conclusions are not very reliable. It will be apparent then that these redemption suits entail a vast amount of labour and responsibility on the Courts. On the whole the Subordinate Judges have, I think, acquitted themselves very creditably and have done their utmost to arrive at just conclusions on the difficult questions presented to them for decision. After this year it will be easier to arrive at a juster conclusion as to the effects and value of the redemption suits, which have been so much encouraged by the liberal policy of Government.

Durations of Suits.

21. From the figures that have been supplied to me by the Subordinate Judges I find that the average duration of suits falling under Chapter II which have been decided in the four districts during the year under report is 3 months and 9 days. The figures for each district are shown in the margin. Among the individual Courts Wai stands first with the very good average of one month and one day; but the total number of suits in the Court is very small. The Shrigonda Court shows worst with an average of 6 months and 10 days; but the reason of this is that the Subordinate Judge of that Court only holds his Court there for a short period, two or three times a year, the rest of his time being spent in assisting the First Class Subordinate Judge of Nagar. The general average duration of 3 months and 9 days is no doubt exceedingly high. Not having any records at hand to which to refer, I am unable to say how it compares with the average duration of former years. If it compares unfavourably, the fact is, however, susceptible of a very satisfactory explanation. Many special causes have been at work during the year under report to delay the disposal of suits—(1) suits falling under clauses (*a*), (*y*) and (*z*) of section 3 were unavoidably postponed owing to the detention of mortgage deeds awaiting registration under the now repealed section 71; (2) suits could not be decided without examining the defendants, who frequently avoided the service of both summonses and warrants, and it was often necessary to postpone cases again and again to secure their attendance; (3) the prohibition to employ pleaders (now removed by the Amending Act) and the ignorance of both plaintiffs and defendants as to the conduct of their cases and the production of their witnesses necessitated the frequent adjournment of suits in the interests of justice; (4) the obligation imposed upon the Courts of investigating the past history of transactions and of ascertaining the true state of the accounts between the parties led to much delay and caused numerous postponements; (5) the circumstances explained in my second paragraph that eleven of the Subordinate Judges had to divide their time between two Courts each extended the periods of the necessary adjournments; (6) the system of holding circuit Courts at several places in each taluka was generally introduced during the year and this also caused the adjournments to extend over a longer time; (7) the almost complete absence of *ex-parte* decision should also be borne in mind when comparisons are made with a period in which *ex-parte* decisions formed the bulk of the disposals. The combined effect of all these causes suffices to account for what may seem an overlong average period for the duration of suits. Some of the causes have recently ceased to operate, so that an improvement may now be hoped for; but the fact remains that it must necessarily take a much longer time now to decide a suit than it did before the Act was passed. The conciliation system has intercepted on its way to the Courts the bulk of the easy simple cases, and the suits that come before the Courts now are the ones that demand time and trouble in disposal.

	M.	D.
Poona	3	5
Satara	3	9
Ahmednagar	3	16
Sholapur	3	9

Cost of Litigation.

22. From the returns furnished to me by the Subordinate Judges I find that the costs incurred in the suits decided under Chapter II amount to exactly 10 per cent. of the total value of the subject-mattter of the suits. In most of the Courts the percentage varies from 9 to 11, but in a few the variations are so great as to lead me to believe that there must be some error in the figures. I have called for additional information on this point. Assuming that 10 per cent. represents the correct average of costs, I am of opinion that the costs are greater than they should be. I am informed, however, that the average of former years was considerably higher, but I have no reliable statistics to refer to for purposes of comparison.

Execution of Decrees.

23. During the year 3,218 applications were presented for the execution of decrees passed in suits falling under Chapter II. In 172 cases only was moveable property belonging to the debtors attached and sold. In 727 cases satisfaction was entered after private adjustments. 1,415 applications are shown under the head "Otherwise disposed of," which includes private settlements not certified to the Courts, cases in which no property was found, and cases in which the decree-holder took no further steps to execute his decree.

Operations of Section.

24. In no case falling under Chapter II has any use been made of the provisions of the second paragraph of section 22, which authorizes the Courts to make over the management of a debtor's immoveable property to the Collector for seven years for the benefit of the judgment-creditor. Nor has the provision been availed of in the execution of decrees other than those falling under Chapter II. The section has, in fact, remained inoperative from the

first. The circumstance is, I think, very noteworthy. This was supposed to be the great compensatory provision of the Act. It was to be the equivalent to the creditors for what other parts of the Act took away from them. Mr. Hope said: "In short, I look upon this provision as the key-stone or test point of the Bill. If it works well, the ryot's credit will be secured on a satisfactory basis; if otherwise, his borrowing even for reasonable purposes, within the limits of his true means, will become most difficult, while the alternatives of absolute non-transferability of land, or eviction and a poor law, will stare us in the face." The fact is, the provision has not worked at all—well or ill. What is the reason of this? The Courts do not of their own motion order the execution of decrees. It is necessary for the party who desires their aid to put them in motion. It may, I think, be fairly assumed that, if the creditors saw a chance of making a profitable thing out of the management of their debtors' estates by the Collector, they would ask the Courts to make the necessary orders. Why then do they not do so? When dealing with fairly honest or fairly solvent debtors, the creditors evidently prefer to settle their judgment claims by some kind of private and amicable adjustment. With such men the creditors run very little risk—and, furthermore, such men very rarely figure as judgment-debtors. The ordinary judgment-debtor is, in fact, insolvent. His estate barely suffices to support himself—if indeed it does so much. How then can it yield a surplus for the payment of the creditor? The only case, as it seems to me, in which management by the Collector is likely to be resorted to is, when the judgment-debtor is practically solvent, but at the same time obstinately dishonest in his refusal to satisfy the decree against him. I do not therefore anticipate that much will ever be made of the provisions of the section. At the same time it is strange that no use whatever has been made of them in execution of ordinary decrees. The First Class Subordinate Judge of Poona reports that recently he has made an order under this clause in the case of two conciliation agreements for execution of which darkhasts have been presented. In one case the Collector returned the papers to the Court on the ground that no rules had been made by Government under section 29 for the management of indebted estates. But I pointed out to the Collector that the order of the Court was a sufficient authority for him to take possession of the property, and that the law gave him all the powers of an owner with the additional powers as Collector under the Land Revenue Code. The framing of rules is not a condition precedent to the assumption of management. Rules need not be framed till the necessity for rules is proved to exist, and at present the want of them is not felt. The Collector will manage the estates of debtors just as he manages those of minors. The order of the Court legally issued under section 22 should therefore be at once accepted by the Collector as an authority for their immediate assumption of the management. I do not see that anything further can be done towards encouraging the operation of this part of the Act.

Operations of Section 19.

25. The first clause of section 19, which authorizes the Courts to discharge the judgment-debtor when his debts are less than R50, has been almost inoperative during the year under report, as in the previous year. It has been made use of in only ten instances and in only four Subordinate Courts. Most of the Subordinate Judges report that no suitable opportunities have occurred for putting it in force, and that no applications have been made by the parties interested. They say there are very few judgment-debtors whose debts are less than R50. One Subordinate Judge states that the ordinary cultivators would be too proud to beg to be discharged from such a petty debt. The second clause of section 19, which empowers the Court *to direct* insolvency proceedings to be taken with respect to a judgment-debtor whose debts exceed R50, has likewise remained a dead letter. The fact is that the law is somewhat defective in this respect, as it provides no means for forcing insolvency proceedings upon an unwilling debtor. Under the provisions of the Procedure Code the debtor has to be active in the matter: proceedings cannot be carried on, if he remains simply passive. Notices must be served on creditors; process-fees must be paid; the debtor must attend. If he refuses to pay the necessary fees, and if he declines to attend proceedings must be dropped. The Court may *direct* proceedings to be taken, but it cannot speed the proceedings to their legitimate issue. It may lead the horse to the water, but cannot make him drink. In a few cases during the year some of the Courts did direct insolvency proceedings to be taken. The Vita Court made the order in eleven cases, the Sholapur Court in seven cases, the Parner Court in one, the Dahivadi Court in one case, and the Shevgaon in one case. Notices to the creditors were ordered to be issued and days were appointed. The debtors, however, failed either to pay the process-fees or to appear on the appointed days, and then the proceedings dropped. In only one case (in the Dahivadi Court) did the proceedings go so far as the declaration of insolvency; and two other cases are still pending. If, therefore, any

effectual use is to be made of this section, the Courts must be empowered to take all the necessary steps of their own motion and to enforce the attendance of both creditors and debtors, and the payment of process-fees must be dispensed with.

Insolvency Chapter.

26. The provisions of the Insolvency Chapter have likewise proved inoperative. Only ten applications were presented to the Courts during the year, two of which were rejected on the merits, one dismissed for default, two withdrawn, and five are pending. The slowness of the people to avail themselves of this remedy is the more remarkable when it is remembered that the mass of the agriculturist population is steeped in insolvency. I think that ignorance of the true intention and of the real effects of the insolvency provisions is the main cause of the backwardness of the people. The Subordinate Judges for the most part assign religious scruples and the fear of losing their credit as being the two chief causes : but it seems to me that if the process were once familiarized to them by a few successful examples, there would be no hesitation on mere religious grounds in freely resorting to it.

Village Munsifs.

Number of Village Munsifs and changes during the year.

27. At the beginning of the year there were 139 Village Munsifs in the four districts. Two died, three resigned, and the appointment of one was cancelled during the year. Three new appointments were made. So at the end of the year there were 136, distributed as follows: 34 Poona, 30 in Satara, 37 in Ahmednagar, and 35 in Sholapur.

Work done by Village Munsifs.

28. Appendix C shows the work done by Village Munsifs in the year in each taluka of the four districts. It includes both suits and execution proceedings. The following statement gives a summary of suits :—

District.	Arrears.	Number of Suits filed.	Total.	Suits disposed of.	Balance.
Poona	102	375	477	429	48
Satara	140	412	552	519	33
Ahmednagar	141	1,575	1,716	1,603	113
Sholapur	35	395	430	383	47
TOTAL .	418	2,757	3,175	2,934	241

There is a falling off in the number of suits as compared with last year, which is partly accounted for by the fact that the appointment of the Village Munsif of Satara, who received many suits, was cancelled during the year. Ahmednagar still stands first, but this is altogether due to the heavy files of the two Munsifs of Ahmednagar and Bhingar, who between them had no less than 1,083 suits in the year.

Distribution of work among Village Munsifs.

29. The work has been very unequally distributed among the Village Munsifs. The two gentlemen last mentioned received a larger number of suits than some of the Subordinate Courts. Fifty-three Village Munsifs, on the other hand, did not receive a single suit. The following table shows the distribution of the work :—

How many Village Munsif received in the year.						
No suit.	Less than 5	More than 5 and less than 10.	More than 10 and less than 25.	More than 25 and less than 50.	Less than 75.	More than 75.
53	46	13	18	7	2	5

From this it will be seen that about three-fourths of the Village Munsifs have had no work to speak of. The Village Munsifs of Shrigonda, Sholapur and Barsi had respectively 157, 103 and 87 suits in the year, and these, together with the Village Munsifs of Nagar and Bhingar, are the only ones who can be said to have had much work.

Manner of disposal.

30. Those who have had work to do, have on the whole done it in a very satisfactory manner. There have been very few complaints against any of them. I recommended the cancellation of one appointment, as I had reason to believe that the work was not done impartially,—otherwise I had no

reason to find fault. The suits disposed of were of a very simple character and were mostly uncontested. In the few contested cases the decisions seemed to be proper. In a few instances moveable property was attached in execution of decrees, which were, however, always satisfied before it became necessary to order a sale. The rules for the guidance of Village Munsifs have worked smoothly and successfully.

General Remarks on the System.

31. I would draw attention to the following remarks from the able annual report of my Assistant, Mr. Ranadé :—

With regard to the general success of the institution of Village Munsifs, I have not much to say. They appear to be chiefly useful in those places where the resident population is to a large extent non-agricultural. The original selection of places does not appear to have been made with a sufficient insight into the local wants. Large places, such as Rahimatpur, Patan, Karad Tasgaon, Sural Kowtha in the Satara District, and Vadgaon, Junnar, Manchar, Talegaon (Dabhada) in the Poona District, and other places might be named, were left unprovided for, although they are the most likely places where business would come to the Village Munsifs, while insignificant places lying far out of the way were provided with this agency. If the institution is to be allowed a fair trial, new selections should be made on some recognized principle of population or trading centres. Those who had no work during the last two years may fairly be relieved of their nominal duties, and others selected in their places for more eligible localities. There can be no doubt of the popularity of this office, and the inhabitants of several places have applied for the services of such officers in their own neighbourhood.

I concur generally in these remarks. The fact seems to be that the selections were originally made with reference to the fitness and respectability of the persons selected, but without reference to the question whether the villages or local areas selected would afford a scope for the exercise of the duties to be entrusted to such persons. Most of the large towns named by Mr. Ranadé are the seats of Subordinate Courts, and doubtless competent persons could easily be found to undertake the duties of Village Munsif: but it is for Government to determine whether it is advisable to locate these petty tribunals in places which have already a Court in their midst, and so to encourage the institution of petty suits between shop-keepers and customers which would otherwise not come before the Courts at all. I may mention in this connection that the number of petty money suits for sums below R10 filed in all the Subordinate Courts during the year was 521. This number would probably be increased twenty-fold if there had been Village Munsif's Courts in all these towns. The institution is, no doubt, popular as Mr. Ranadé says and as I pointed out last year; but the popularity is confined chiefly to the petty traders and shop-keepers, who would constitute the majority of the plaintiffs. I do not think there is much use in continuing in their appointments those Village Munsifs who have done no work during the last two years. They are only needlessly troubled, having to submit returns, accounts, etc., and the inspecting authorities are also needlessly troubled, having to keep a watch over them, and to visit them from time to time.

Conciliation.

Number of Conciliators and changes during the year.

32. At the commencement of the year there were 349 Conciliators in the four districts; during the year 5 died, 20 resigned, the appointments of 5 were cancelled, 48 appointments were reduced, 42 new appointments were made, so that at the close of the year the numbers were 313. The following statement gives the details for each district :—

District.	Number at beginning of year.	Died.	Resigned.	Appointments cancelled.	Appointments discontinued.	New Appointments.	Number at end of year.
Poona . . .	60	1	2	2	10	10	55
Satara . . .	92	1	2	1	38	21	71
Ahmednagar . .	74	3	5	2	...	7	71
Sholapur . .	123	...	11	...	...	4	116
TOTAL .	349	5	20	5	48	42	313

Owing to the paucity of Conciliators the taluka system was discontinued in the Sangamner, Karjat and Indapur Talukas, and a few small conciliation circles were constituted in those talukas according to the number of Conciliators available. In consequence, too, of the absence of efficient Conciliators and the conspicuous want of success attending the experiment, the conciliation system was discontinued in the Khed taluka and in the Mulshi Petha of the Poona District and in the Man Khanapur, Patan and Javli Talukas and in the Shrirala Petha

of the Satara District. In the year 1880 the system had been also discontinued in the Ankola taluka of the Ahmednagar District. The conciliation system (it will be seen from the above) is thus in full force in twenty-six talukas, in partial operation in five talukas, and has been suspended in six talukas.

Taluka and Circle Systems.

33. Government are aware that in the Sholapur District what is known as the circle system is in force. That is to say, each taluka has been divided for conciliation purposes into circles or groups of villages with a separate set of Conciliators for each group; but the Conciliators who reside at the chief town of the taluka exercise a concurrent jurisdiction with the other circle Conciliators. In the other three districts the taluka system prevails, the taluka being the conciliation unit. That is to say, there are a certain number of Conciliators for each taluka who have concurrent jurisdiction within the limits of the taluka. The only exception is in the case of the three before-mentioned talukas, where, owing to the too small number of available Conciliators, their jurisdiction has been limited to a few villages, the remaning villages being excepted from the operation of the system.

Work done by Conciliators.

34. Appendix* D shows the number of applications received and disposed of by the Conciliators in each taluka during the year, the manner of disposal and the fees realized. The magnitude of the figures at once arrests attention :—

District.	Number of Applications for disposal.			Number of Applications disposed of.								Special Particulars.		
								Conciliation failed.						
	Arrears on 1st January 1881.	New Applications received during the year.	Total for disposal.	Withdrawn by Applicant or compromised.	Struck off by Conciliator for default.	Disposed of by agreement forwarded to Court under section 44.	Referred to Arbitration and agreement forwarded to Court under section 45.	By refusal or neglect of opposite party to attend.	By non-agreement of parties.	Total of two previous columns.	Total disposed of.	Balance remaining for disposal.	How many Certificates under Section 46 granted during the year.	Fees realized during the year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
														R a.
Poona . .	5,223	15,291	20,514	2,039	4,908	2,351	8	6,569	2,818	9,387	18,693	1,821	8,357	2,983 4
Satara . .	8,654	19,112	27,766	1,585	7,123	2,185	148	10,739	3,717	14,456	25,497	2,269	12,965	4,323 11
Ahmednagar .	4,454	14,202	18,656	1,231	4,982	2,219	13	5,852	2,669	8,521	16,966	1,690	8,277	2,878 4
Sholapur . .	1,196	8,872	10,068	714	1,603	1,547	6	2,683	1,822	4,505	8,375	1,693	4,468	1,645 1
Total .	19,527	57,477	77,004	5,569	18,616	8,302	275	25,843	11,026	36,869	69,531	7,473	34,067	11,835 4

For the sake of comparison the total figures for the previous year 1880 (*vide* paragraph 28 of my report No. 255 of 1881) are subjoined; but it has to be remembered that in 1880 the system had been at work for only about seven months :—

...	...	48,588	...	3,252	3,277	6,771	172	9,370	6,435	15,805	29,277	...	13,452	5,801 2

Cases in which Conciliation failed.

35. Government will see from the above what an immense amount of labour has devolved upon the Conciliators and what a very large number of cases they have disposed of. The total disposals are 69,531. The failures (36,869), as was to be expected from the optional character of the system, occupy the foremost place, representing, as they do, 52 per cent. of the total disposals. It is important to observe the figures in columns 9 and 10, which make up the total of failures shewn in column 11. Column 9 shows the failures which resulted from the absolute refusal or omission of the respondents to appear before the Conciliator, and column 10 shows the failures which resulted from the non-agreement of parties after they had been brought face to face before the Conciliator. The number of the former failures is no less than 25,843 or 71 per cent. of the whole, that of the latter is 11,026, which equals about 29 per cent. of the total failures and about 16 per cent. of the total disposals. In estimating the work done by the Conciliators the former number must be left out of account as in such cases there was no scope for the exercise of their functions. The chief complaint made to me by Conciliators is that the people will not come to them when called, because they know they cannot compel their attendance; and many of them pray that the law may be amended so as to arm them with the necessary powers.

* Not printed in the selection.

Dismissals. 36. Next in order to the failures come the dismissals for default, which are very numerous, amounting to 18,616 or nearly 27 per cent. This figure represents the cases in which the applicants, after having presented their applications to a Conciliator, saw cause for one reason or another to drop further proceedings. In numerous instances, no doubt, they privately settled their disputes with their opponents. In other cases they probably thought fit to postpone their claims till another opportunity, and therefore neglected to appear before the Conciliator on the appointed dates. Probably also many applications were frivolous and the idea of prosecuting them seriously was abandoned after a short time. A large number of these dismissals is however attributable to the total or partial discontinuance of the conciliation system in several talukas of which timely notice had been given. The pending applications in those talukas were disposed of for the most part either by grant of certificates under section 46 or by dismissal for default. Those persons, who needed certificates in order to prevent their claims from becoming time-barred, applied for and obtained certificates before the system finally ceased, but those who had no reason to fear the bar of limitation allowed their applications to be struck off by default. These various causes are sufficient, I think, to explain the very large number of dismissals.

Withdrawals. 37. Along with the dismissals may be considered the withdrawals, which amount to 5,569 or about 8 per cent. of the total disposals. They may be attributed almost wholly to private adjustments or amicable settlements effected with or without the intervention of the Conciliators, who, however, claim most of them as the result of their mediation. In many cases the terms of the compromise were not only settled before the Conciliator, but the settlement was carried into effect in his presence, so that no necessity remained for reducing the agreement to writing and sending it to the Court, and the parties were unwilling to incur the useless expenditure which the transmission of the already executed agreement would involve.

Agreements 38. I now come to the agreements effected before Conciliators and by them reduced to writing and transmitted to the Courts under the provision of sections 44 or 45. They number in all 8,577 (of which only 275 are under section 45) and they constitute nearly 13 per cent. of the total disposals. This percentage at first sight appears disappointingly small, and it is in fact much lower than it was last year. On the other hand the percentage of total failures is also smaller than it was last year. But it would be unfair and misleading to judge from a mere comparison of the number of agreements with the total number of disposals, or even with the total number of failures. The better test is to compare the number of agreements with the number of failures shown in column 10, that is to say, with the number of failures resulting from the non-agreement of parties in the presence of the Conciliators. The cases dismissed and withdrawn, which together make up a percentage of 35, cannot be regarded as failures; on the contrary very many of them are successes which must go down to the credit of the Conciliators. Neither can the failures shown in column 9—failures caused by the non-attendance of the opposite party (which come to nearly 36 per cent.)—be set down to the debit of the Conciliators, for the latter had in such cases no scope for the exercise of their functions. There remain therefore only the agreements to be compared with the absolute failures as shown in column 10. The agreements are 8,577, and the absolute failures are 11,026. It may be said, therefore, that in about 44 per cent. of the cases which come fully before them the Conciliators are successful in effecting agreements—a result which, judged by the mere test of numbers, must be considered satisfactory. I would take this opportunity of again pointing out that if the cases in which agreements and private adjustments were effected by Conciliators be added to the number of suits instituted during the year, it will be found that the total amount of litigation nearly reaches the average of the ten years preceding 1880. I do not think it can therefore any longer be said that the creditors have been "scared out of our Courts."

Certificates. 39. The number of certificates actually granted by Conciliators under section 46 of the Act is so large as to merit a separate notice. In 1880 the number of certificates granted was 13,452 and in my last year's report I remarked that this fact "would seem to imply a prospective increase of litigation." In the year 1881 the enormous number of 34,067 certificates was actually issued in all about 47,000 certificates in the course of 20 months: and yet the number of suits and darkhasts in which the production of a certificate would be necessary, filed during the year, does not amount to one-eighth of that number. I have been told that

creditors sometimes make use of these certificates as if they were decrees of Court to extort renewal bonds from illiterate debtors; but I fancy that the cases in which this is done must be very rare indeed. Still it is strange why so many certificates, which cost 4 annas each, should have been taken out. It would appear that many applicants go to the Conciliators without any immediate intention of taken further proceedings against their opponents in case of failure before the Conciliators.

Fees.

40. The fees realized during the year in proceedings before Conciliators amount to the respectable sum of ₹11,825-4 levied in Court-fee labels. Rupees 8,516-12 are derived from the certificates under section 46, and the rest from the percentage fee charged on agreements sent to the Courts under sections 44 and 45. The cases which were dismissed or withdrawn or in which no certificate was taken out, yield no fee. From the first I have been of opinion, and I still strongly hold the opinion, that a nominal fee of one anna should be charged on every application made to a Conciliator, not only as a guarantee of the *bonâ fides* of the applicant and to discourage frivolous and unnecessary applications which merely waste the Conciliator's time, but to form a fund out of which the over-worked Conciliators might be provided with clerical assistance to be paid for by them on a sliding scale according to the amount of their work. The present arrangement by which a few karkuns and bailiffs from the Subordinate Courts have been placed at my disposal for the assistance of such Conciliators and Village Munsifs as require assistance does not work very satisfactorily. Several of the karkuns and bailiffs I have sent back to the Courts where their presence was necessary, and soon, as the work is increasing, the others will be wanted. Besides, it is very difficult to distribute the services of these karkuns among the different Conciliators. An institution fee of one anna on each application presented in 1881 would have brought in nearly ₹4,000, which would have sufficed for the entertainment of the necessary temporary establishment.

Distribution of Work among Conciliators.

41. The work has been very unevenly distributed among the different Conciliators. Some have had too much to do: many others have had no work at all. The following table gives an idea of the distribution of work:—

District.	Number of Conciliators who have had on an average each month						
	More than 75 Applications.	Between 75 and 50.	Between 50 and 25.	Between 25 and 10.	Between 10 and 5.	Less than 5.	None at all.
Poona	3	3	14	17	12	3	3
Satara	...	6	17	24	14	9	1
Ahmednagar	1	...	15	27	15	22	2
Sholapur	...	1	5	13	24	66	18
Total	4	10	51	81	65	100	24

Those who had more than 300 applications in the year I consider to be hardworked, and most of them require more or less clerical assistance. The 24 Conciliators who received no applications and 30 others who received less than an average of two applications, and about 16 others who did not succeed in effecting a single agreement, I consider to be superfluous; and I think their services may be dispensed with after their present term of office. Most of them belong to the Sholapur District, in which there are too many Conciliators, very few of whom are competent. The small circle system has not been at all successful in the Sholapur District. It is impossible to get sufficiently good men in small local areas. The Conciliators at present appointed for most of these small local areas are inefficient and take little interest in their work and are careless about submitting their monthly returns and statements. In June last I earnestly recommended the selection of the best men from among the present Conciliators and the adoption of the taluka system which prevails in the other districts Government, however, determined to give the circle system a further trial. It has now, I think, had a sufficient trial. My Assistant, Mr. Bhidé, strongly advises that it should be discontinued after the present year, and I again respectfully make the same recommendation. Of the 116 Conciliators

in the district there are about 64 whose appointments should not, I think, be renewed after the present term: and the rest are not sufficiently numerous to support the circle system, though, as a matter of fact, nearly all the conciliation work of the district has hitherto been done by them.

Value of the Claims in Conciliation Cases.

42. I have ascertained the total value of the claims or subject-matter in the applications presented to the Conciliators during the first eleven months of the year. It amounts to the large figure of R44,53,828-9-4. The value of the claims in cases in which agreements have been effected amounts to R5,60,032-3-7, thus bearing to the total value of applications nearly the same proportion as the number of agreements bears to the total number of disposals.

General Nature of Conciliation Agreements.

43. Most of the agreements effected by Conciliators relate to claims on simple money-bonds or decrees. A good many (especially in the Satara District) relate to mortgage transactions. Very few disputes concerning immoveable property are amicably settled. Speaking generally, I may say that most of the agreements which I have seen—and I have seen nearly all—are in outward appearance fairly reasonable and equitable. In the case of claims on money-bonds and decrees, remissions, sometimes nominal, sometimes substantial, are allowed, and it is usual to allow payment of the balance by instalments extending over longer or shorter periods. Mr. Ranadé considers that the abatements agreed to before Conciliators compare very favourably with the reductions made by the Courts after full enquiry and after putting into operation the machinery provided by sections 12—14 of the Act. He quotes the following figures in support of his opinion:—

District.	Value of claims as per Application.	Amount settled as per Agreement.	Percentage of abatement.
	R	R	
Poona	1,73,929	1,29,306	26
Satara	1,94,738	1,38,689	29

These figures, he says, satisfactorily dispose of the allegation that the Conciliator simply gives a legal sanction to the claims of creditors without scrutinizing them: and he further says that the conciliation work, as tested by the nature of the agreements entered into by the parties, shows evident signs of care and deliberation. Though fully admitting that most of the Conciliators display a laudable anxiety to cut down as far as possible exorbitant claims in the interests of the impoverished debtors, I am still inclined to think that the remissions are frequently more apparent then real, and that the claims are sometimes purposely enhanced in order to make the remissions appear more imposing: and I feel that there is no guarantee for that thorough investigation into the true merits of each transaction which would be secured by the application of the law in the Civil Courts. In some talukas a fair number of mortgage transactions have been settled by the Conciliators, the compromises being generally proper and equitable. The decision of some redemption suits in favour of the plaintiffs in which it was ruled that the mortgage debts had been wholly discharged out of the profits of the mortgaged property, give a great impetus to the private compromise of redemption claims. The compromises assumed various forms, but were mostly in favour of the debtor and secured to him better terms than he could have hoped for before the Act became law, though perhaps occasionally not such good terms as he would have gained had he gone into Court. In some talukas the general character of the agreements is much better than in others: and so even in the same taluka the agreements of some Conciliators are better than those of others. I come across some agreements which make me wish that the system was not in force, and many agreements have blemishes which I would gladly see removed, but, on the whole, I think I may safely say that the agreements are good. Certain it is that, comparatively speaking, very few complaints have been made against them, either to me or to the Subordinate Judges. Of all the agreements sent to the Subordinate Courts to be filed during the year, only in 77 cases did any of the parties appear, in pursuance of the notices delivered to them, to show cause why such agreements should not be filed. In 109 cases the Subordinate Judges refused to file the agreements either on account of good cause shown, or on account of some illegality or obvious error (such as omission of signature) which necessitated the document being sent back for correction. All the other agreements were duly filed and will take effect as decrees of Court.

44. Though its success and its results have been by no means uniform, I think that where the Conciliators are themselves good, the conciliation system may fairly claim to have done much good. Mr. Ranadé has a very high opinion of the usefulness of the system: he thinks that its general working has been satisfactory and that "there is every reason for the continuance of the experiment for a further period, especially in view of the larger scope given to the Act by the enlarged definition of the word 'agriculturist.'" Mr. Bhidé writes as follows: "Taking all things into consideration, conciliation has done, I think, a great deal of good, and if carefully worked, is likely to prove a very useful institution. The only drawback is the paucity of really good and willing Conciliators * * *. On the whole I consider the work done by the Conciliators in the two districts under my charge to be satisfactory." The Subordinate Judges, with a few exceptions, speak well of the Conciliators and of the system generally. The exceptions proceed from those talukas wherein the results have been less favourable than elsewhere, and the Conciliators below the average in point of either numbers or efficiency. Personally I do not share to the full extent the favourable opinions pronounced upon the system by other officials. My judgment is still to a certain degree in a state of suspense, and I cannot feel sanguine as to the ultimate success of the experiment. At the same time I would be most reluctant, in view of the results already achieved, to recommend the general suspension of the system. I would only recommend its discontinuance or curtailment in those places where the agency at command is found to be inadequate in numbers or where the want of success attending it is more than usually conspicuous. A glance at Appendix D will show that in some talukas the results have been disproportionately small. To realize all the theoretical advantages of the scheme, it is necessary to presuppose Conciliators as nearly perfect as possible, and a public willing to avail themselves to the full of the advantages offered, and also to presume that the parties who are brought face to face before the Conciliators are fairly on a level in point of worldly shrewdness, intelligence and knowledge of the rights which the law gives them. It were vain, however, to hope for such theoretical perfection. We can only look at the practical advantages and disadvantages of the system. Its advantages are not a few. It tends to save the parties a vast amount of time, trouble and expense. It tends also to allay the irritation between parties which resort to the Courts might occasion or increase. It intercepts in the initial stage an immense body of litigation and thus allows to the Courts more leisure to investigate the contested and more difficult cases that come before them. The chief objection I have to the system is that it tends to encourage collusive agreements, and to nullify to a great extent one of the principal objects of the Act, namely, the relief from debt of the indebted agriculturists, by the facilities which it affords for evading that searching enquiry into the merits of each transaction which to my mind is the most important means of relief afforded by the Act. There are many conscientious and zealous Conciliators who seek to probe the true merits of each case and who use all their influence to persuade the parties to come to an equitable compromise. Other Conciliators are more easy-going, and such persons are apt to be made mere registrars for giving legal sanction to the claims presented to them. Large numbers of conciliation agreements are little better than mere renewal bonds, supplanting old deeds. In former reports I have enlarged upon this subject and it will here suffice thus briefly to refer to my views. I have only to mention in this connection a new practice which seems to be growing up in some places. When a loan is being negotiated, in order to avoid the trouble and expense of writing out a bond on stamped paper and of having it formally registered by a Village Registrar, the parties go before a Conciliator. The creditor makes a demand. The debtor admits the debt and promises to pay in certain sums and at certain times as may have been fixed upon. The Conciliator takes down the agreement in writing. It is signed by the parties. It is then sent to the Court and takes effect as a decree. The dispute and the pleadings before the Conciliator are a kind of legal fiction to give him jurisdiction. The lender thus gets what is equivalent not only to a registered bond, but to a registered bond, with a decree cut and dry, already tacked thereto; and this he gets without stamped paper, registration, or litigation, by the mere collusion or consent of the borrower. In this way the stamp and registration laws are easily evaded. I do not think that a state of things like this was ever contemplated. It does not, however, appear illegal.

General Results of the Conciliation System.

45. In concluding my remarks on conciliation I have much pleasure in bringing to the favourable notice of Government the names of those Conciliators who have done specially good work. The Subordinate Judges are perhaps the best of all Conciliators. There are 15 Subordinate Judges who hold this office in addition to their ordinary duties. The two most

Successful Conciliators.

successful have been Khan Saheb Meherjibhai Kuvarji of Tasgaon and Rao Saheb Jaysatyabodhrav Tirmalrav of Rahimatpur. Among the non-official Conciliators the following have been among the most industrious and the most successful:—

Names of Conciliators.	Residence.	Number of Applications disposed of.	Number of Agreements under Sections 44 and 45.	Number of absolute Failures as per Column 10.
Poona District.				
Rao Bahadur Chintamanrao Hari Deshmukh	Poona	938	201	109
Mr. Shripat Trimbak	Chincholi	703	133	55
Rao Bahadur Sadashiv Ballal Gounde	Poona	1,108	185	149
Mr. Rango Bapuji Rede	Talegaon	909	137	64
" Trimbakrao Ramrao	Sasvad	750	116	263
" Gajanan Moreshwar Dev	Chinchvad	685	109	47
Rao Bahadur Shriniwas Shesho	Poona	651	78	73
Satara District.				
Mr. Ganpatrao Vithal	Chikurdi	864	182	94
" Vasudev Gangadhar	Soni	426	154	57
" Wali Saheb valad Dadamiya	Satara	855	76	159
" Balvant Narayen	Karad	648	41	100
" Ramchandra Ballal	Pusegaon	284	59	53
" Trimbak Sadashiv	Wai	473	89	68
" Bhaskar Daji	Wai	697	88	55
Ahmednagar District.				
Mr. Apaji bin Dataji	Kada	167	43	32
" Balvant Mahadev	Pedgaon	121	40	21
Khan Bahadur Nasarwanji Kharsetji	Nagar	173	59	42
Khan Saheb Shahabudin Imamudin	Nagar	1,254	291	249
Mr. Kashinath Khanderao	Kokamthan	171	59	22
" Krishnaji Babaji	Kopargaon	592	144	131
" Balvant Pandurang	Koradgaon	292	50	37
" Parvatrav Ramchandra	Chambhurdi	473	183	36
Sholapur District.				
Mr. Narayan Gopal	Mandrup	185	74	33
" Shivlingapa bin Gursidapa	Kumbhari	518	310	35
" Madhavrao Kashiba	Jategaon	188	52	27
" Krishnaji Bhivrao	Jinti	115	46	10
" Keshav Vinayak	Tembhurni	141	38	21

In addition to the gentlemen mentioned in the above list many other Conciliators have shown a keen interest in their duties and done much useful work. A few whose work was not satisfactory resigned their appointments during the year. With the exception of those whom I may term the useless and redundant Conciliators in the Sholapur District, most of the other Conciliators are really good and efficient men. Some Conciliators have asked me to obtain for them vacant kulkarni vatans as a reward for their services, others ask for appointments for their sons or relatives, and with such applications it is somewhat hard to know how to deal. The majority, however, of the Conciliators seem to me to be thoroughly disinterested. It is to be regretted that the institution of conciliation is not more popular than it appears to be, and that its usefulness is not thoroughly appreciated by those for whose benefit it was introduced. The large number of failures to attend, shown in column 9 of the return, sufficiently indicates that there is much room for improvement in this respect. The departmental rules framed by me for the guidance of Conciliators have worked satisfactorily, and I have not yet found it necessary to ask Government to sanction any new rules under section 49. In a latter paragraph of this report I propose to suggest one rule which I consider very essential (*vide* paragraph 67). The present periods of appointments terminate on 30th April 1882 for the Poona District, on 14th May 1882 for the Satara District, and on the 30th June 1882 for the Ahmednagar and Sholapur Districts. I think it would be expedient to have a uniform period for all the districts, and I would therefore suggest that the appointments of all the present Conciliators should be extended by notification till the 31st July next, so that any curtailment or modification of the system that may seem necessary to Government, may take effect from one and the same date in all the four districts.

Superintendence, Inspection and Revision.

Charges during the year.

46. During the year under report Mr. Larken, whose ill-health had interfered with the efficient discharge of his duties, ceased to be Special Assistant Judge under the Act and proceeded on sick leave to England. His place was taken by Rao Bahadur Mahadev Govind Ranadé, who

has devoted himself with much zeal and with his usual ability to the new work. I have much pleasure in taking this opportunity of recording the valuable assistance and support I have received from him since he took up his present appointment and the very high opinion I have formed of his industry and ability. My other Assistant, Rao Bahadur Vishnu Moreshwar Bhide, has also worked well and afforded me considerable assistance.

Tours of Inspection.

47. In the travelling season from October 1880 till June 1881 I visited and inspected all the Subordinate Courts in the four districts, and several of them more than once. From October 1881 up to the present time I have visited and inspected 26 out of the 36 Courts. During the year I also saw and examined the records of nearly all the Conciliators and Village Munsifs. A few only, owing to sickness or absence from their villages at the time of my visit, I was unable to see personally. My Assistants have also visited and inspected all the Courts and seen all the Conciliators and Village Munsifs in their respective districts. At each visit of inspection to a Subordinate Court all the records then in the Court of suits and proceedings falling under Chapters II and IV are carefully scrutinized, irregularities noticed, and appropriate orders issued to the Subordinate Judges. Cases calling for revision are set apart for fuller investigation. During the monsoon the cases sent to the record rooms of the District Courts are similarly examined. In this way about 75 per cent. of all decided cases are subjected to careful scrutiny. I am of opinion that the advantages expected from this system have been thoroughly realized and that the chances of failures of justice are thereby minimized. One great advantage is that we make and renew from time to time the personal acquaintance of the Subordinate Judges and have thus opportunities of knowing their capabilities, and of discussing with them orally the many questions of procedure, practice and law which are constantly turning up and presenting difficulties.

Revision.

48. The year has been marked by a very striking increase in the number of revision cases. I reported last year that in 1880 I had, in exercise of my powers of revision, taken up 50 decided cases, 3 on my own motion, 46 on petition for review, and 1 on reference from an Assistant. During the year under report I had to take upon my file for judicial investigation no less than 226 cases. Of these 176 were on petitions for revision, 4 on my own motion, 35 on references from Mr. Ranadé, and 11 on references from Mr. Bhide. The following table shows how these cases (which are in the nature of appeals against the judgments of the lower Courts in suits falling under Chapter II) were disposed of:—

Arrears from 1880.	Admitted on File in 1881.	Total for disposal.	Decree allowed to stand.	Reversed.	Amended.	Reversed and remanded.	Applications returned for want of Jurisdiction.	Total disposed of.	Balance.
14	226	240	137	12	27	23	7	206	36

Of the 36 shown as balance, 19 have since been disposed of. The decrees of the lower Court were only interfered with in cases where there seemed good ground for believing that failures of justice had occurred. The reversals are few in number, which speaks well for the manner in which the Subordinate Judges have decided their cases. Besides the above cases which were regularly taken on the file for judicial investigation, I received numerous applications of a miscellaneous nature and several references from my Assistants which I was able to dispose of in a summary manner. The increase in the amount of revision work was most marked during the last four months of the year, and the greater part of my time is now taken up in this duty. Apart from the inspection work, the other work in my office is nearly equal to that in the office of a District Judge and is constantly increasing; and I find that my present establishment is not adequate to cope with it. It is only by means of the occasional assistance I obtain from the establishments of the Subordinate Judges whose Courts I visit that I can prevent the work from falling into arrears. This is a subject on which I may soon have to address a separate report to Government.

From the experience of the last five weeks I think the number of applications for revision is likely to be much higher this year than in the year under report. The people are showing themselves keenly sensitive of the advantages of the revision system, which provides a sure

and more constant, as well as a cheaper safeguard against injustice and error than that afforded by the costlier and more tedious process of appeal, which, as a rule, was a luxury which only the rich were able to indulge in.

Registration.

Proposed changes in the Registration System.

49. In April last I submitted to Government a memorandum containing my opinion as to the present manner of working the registration provisions of the Act: and I have seen no reason to change the opinions then expressed. From the reports, which followed mine, of the Collectors and the Inspector General, Government were satisfied that the present system can no longer be maintained, and have recently issued orders for an important modification of the scheme. I have not yet learned the details of the amended scheme: but there are one or two points on which I would respectfully venture to make a few suggestions. Each taluka should, I think, be divided into circles varying in number from four to eight according to the size, population and importance of the taluka. The pay of the Circle Registrars should be fixed in three grades, because the work in some circles will be heavier and more responsible than in others, and it is well to have grades so as to supply that stimulus which the prospect of promotion in the department would offer. Only picked men should be appointed Circle Registrars. I would most earnestly deprecate the appointment of *Officiating Kulkarnis under any circumstances*. All the objections which can be urged against the appointment of the Kulkarni as Registrar of a single village will apply with accumulated force to this appointment as Registrar of a group of villages. To secure his efficiency and his being kept under check, the stipendiary Circle Registrar must always be at his post: he must have but one duty and but one master. Nor do I think that the new places should be filled up by young Karkuns and Umedwars from Sub-Registrars' offices. The Village Registrar is meant to be a bulwark to the illiterate agriculturist against fraudulent and collusive agreements. I would much rather see village registration abolished than the present system continued. At present false statements as to the nature of the consideration are being freely made in bonds in order to deceive the Courts hereafter and to evade and neutralize the wholesome provision of sections 12, 13 and 14 of the Act. It should be the duty of the new Circle Registrars to ascertain, as far as possible, that the consideration is truly and honestly recited in the bonds they register, and that the executant thoroughly understands what he is about. The appointments should, therefore, be given to trustworthy men. There are many worthy pensioners who would be glad of a slight addition to their means. Many Conciliators who, though of good character and repute, are in poor circumstances, would willingly accept the post. Unless the work is entrusted to a specially selected agency I feel convinced that it would be better, in the interests of the public, to abolish the compulsory registration of simple money bonds, and to leave the registration of mortgage and sale deeds of immoveable property in the hands of the Sub-Registrars. It would be a very popular thing if simple money bonds for less than R20 were exempted from compulsory registration.

Documents registered in 1881.

50. The report of the Inspector General of Registration submitted in September last shows all the information he was able to obtain for the year ending the 31st March 1881. I think it would be more convenient for purposes of comparison if the registration statistics could be compiled for the calendar year. I have endeavoured to obtain accurate information regarding the number of sale deeds, mortgage instruments, and simple money bonds executed by agriculturists during the year 1881. I shall have occasion in a subsequent paragraph to allude to these figures and to some of the statistics in Major Portman's report. I quite concur with the Inspector General in thinking that the information concerning the number of renewal bonds (*i.e.*, bonds to supplant old ones) is unreliable and misleading. There are no columns in the monthly returns sent in by Village Registrars to show this information, as far even as it appears on the face of the instruments, a want which should be supplied. If the number of Village Registrars be reduced, and competent Circle Registrars be appointed, I think we may hope for a marked improvement with regard to accuracy and punctuality in the submission of returns. I have not had much time to inspect Village Registry Offices, but I have taken considerable interest in the subject from its near connection with the other parts of the Act and have discussed the whole question with all the Subordinate Judges, Mamlatdars, and Sub-Registrars whom I have met during my tours; and I venture to think that, if my recommendations are adopted, the system will have a fresh start with every prospect of success.

Receipts, Pass-Books and Statements of Accounts.

Chapter IX of the Act.

51. To the best of my knowledge and belief Chapter IX of the Act has remained a dead letter. I fear that the people are mostly ignorant of the important provisions made therein for their advantage. I do not think that the practice of giving receipts, though it is made compulsory by law, is more followed than it used to be. I have not heard of any instances of statements of account or pass-books being demanded from the creditors. There have been altogether only 9 prosecutions in the four districts under Section 67 for neglect to tender receipts; and only in one case out of the nine was a conviction obtained, the savkar having been fined R30. There seems little chance of the provisions of Chapter IX being properly enforced unless the Assistant Collectors and Mamlatdars bestir themselves energetically in this behalf. The tender of written receipts is a thing that should be insisted upon, and prosecutions should be instituted in flagrant cases of neglect.

General Remarks.

Mr. Ranadé's Opinion.

52. The following extract is from the yearly report of my Assistant, Rao Bahadur Mahadev Govind Ranadé, a gentleman whose grasp of mind and keen powers of observation entitle his opinions to great weight:—

I have had only five months' charge of my present duties, and it may be too soon to form any definite judgment about the general working of the Act. However, as I have paid considerable attention to its operation from the commencement, even when I had no official connection with its working, I think I may safely express my views in regard to its general success or failure. The heavy indebtedness of the agricultural classes being admitted to be a great political evil, I do not see that there was any other alternative open to Government than the attitude assumed by it towards the savkars and the agriculturists in giving its sanction to this measure. The Act is essentially a compromise between extreme views. As far as its popularity with the agricultural classes is concerned, I can bear personal witness that nothing which the Government has done during the last twenty years has tended to create more confidence and secure the good-will of the agricultural classes than the enactment of this measure. The ryots certainly do not complain, nor is there any external evidence up to this day of any restraint or diminution of their credit. The alleged increase of sale transactions is not proved to be a fact by the evidence of the records of the Registration Department. As for the savkars, there can be no doubt that the middle men, who traded on borrowed capital, find a great difficulty in carrying on their business. Even the bigger capitalists have had greatly to restrict their business; but these results were contemplated from the first as necessary consequences of the Act, and need not therefore excite surprise. In other respects the effects of the Act have been to a great extent misunderstood or exaggerated * * * * This certainly does not show that Sections 12 and 13 make a sweeping change in ordinary transactions. The real work contemplated by the Act—the redemption of old mortgages and the restoration of the peasantry to their former status—can hardly be said to have yet commenced. Mere judicial reform, unaccompanied by large administrative measures, will not however achieve this end. The exemption of person and immoveable property from arrest and attachment in the execution of money decrees was a necessary reform, and has certainly not been attended with any of the more serious consequences which were at first apprehended. *Ex-parte* decisions have ceased under the Act and their place is now taken up with admitted or adjusted cases. This certainly is an immense improvement * * * *. On the whole, the success achieved is sufficient to justify the continuance of the experiment on the same lines which have hitherto been followed.

I think Government will agree with me in considering that the above is a very valuable and important piece of evidence in favour of the general success of the Act.

Mr. Bhidé's Opinion.

53. My other Assistant, Rao Bahadur Vishnu Moreshwar Bhidé, gives a more uncertain sound. He writes as follows:—

The enquiries made by me at every place I visited in the districts under my charge tend to show that the agriculturists now-a-days do not get advances from their creditors as freely as they used to do before the introduction of the Act. Several causes have contributed to this result. The poverty and destitution to which the agriculturists are reduced by the late famine, the diminution of the savkars' monetary resources produced by the same cause, the nature of the provisions of the Relief Act * * * * * seem to have exercised a considerable influence in bringing about a diminution of credit, * * * * and this is attested by the diminution in the receipts from general stamps and in the number of documents registered. It appears many petty savkars have given up money-lending and taken to other avocations. It must be stated, however, that really solvent agriculturists do get advances from their creditors. The savkars, however, now-a-days take a great deal of caution and care and deal with such agriculturists only in whom they have confidence.

Government will perceive from the above that the changes made by the Act are quoted as one of several causes conducing to the restriction of money-lending and the curtailment of the ryots' credit. No attempt is made to assign to the operation of the Act its peculiar force as a separate factor in promoting the result described.

Reports of Subordinate Judges.

54. The reports received by me from the various Subordinate Judges in the four districts reveal a wide divergence of opinion. Some few are optimistic in the extreme and depict things in the most roseate of hues—a few on the other hand take a gloomy view of the situation and lament the partial failure of the Act. Most of them ... while admitting the value and good effects of

credit. The facts seems to be that the circumstances of different districts and different talukas vary very greatly, and it is impossible to judge of one from another. The difference in the different talukas in various respects is sufficiently evident from the statistics bearing on the several subjects embraced in this report which I have been at the pains of collecting.

55. In the month of August last I had occasion to submit my own opinions and conclusions on the important question as to the general effects of the Act, in a few remarks addressed to Government which were suggested by the perusal of the pamphlet published by the Honourable Mr. Justice West. Government will recollect that I was unable to concur in many of his statements and opinions, which seemed to me to be unsupported by evidence. I do not now propose to travel over the same ground, nor would time or space permit me. I still adhere to the views then expressed, and I would only now wish to supplement what I then wrote by the remarks that follow. Since the above date I have been endeavouring to collect as much information as possible from the following sources:—

(1) The registration returns for 1881 and the previous year; (2) the sales of Court-fee labels and general stamps; (3) the cultivation returns; (4) judicial statistics; (5) the opinions and reports of officials and others who have had practical experience in the four districts; (6) information supplied by a few leading savkars in each taluka; (7) enquiries made by the Subordinate Judges, while on circuit, in a few selected villages with the view of ascertaining the existing indebtedness of the ryots and the possibility of relieving it by a more general application of the conciliation system.

56. I have already in this report referred to the opinions of the various Judicial officers serving under me, and I have dwelt at some length on the judicial and conciliation statistics. I therefore proceed to notice the other heads or sources of information enumerated above. I would first allude to the registration returns.

Registration Returns.

Through the Sub-Registrars I obtained information concerning the number of sale deeds, mortgage deeds, and money-bonds executed by agriculturists during the first ten months of the year, and from most of the talukas I have got supplemental returns for the remaining two months. The following table shows with approximate correctness the number of instruments of the above descriptions newly executed during the year by agriculturists in the four districts:—

District.	Sales of Immoveable Property.	Mortgages of Immoveable Property.	Simple Money-bonds.
Poona	2,331	8,573	14,766
Satara	2,701	15,304	13,082
Ahmednagar	1,372	2,556	9,719
Sholapur	1,282	1,898	4,226
Total	7,686	28,331	41,793

I cannot give figures for previous years; the appendices in Major Portman's report, even for the year ending 31st March 1881, do not distinguish between fresh transactions registered under Section 56 and old deeds registered under Section 71, and are not therefore valuable for purposes of comparison. It will be observed that the sale deeds of immoveable property do not appear to be alarmingly numerous. As the registration of sale deeds for less than R100 was not formerly compulsory, it is unfortunately not possible to institute comparisons with the average of previous years. We cannot tell how many private unregistered sales used to take place each year under the old system. With reference to the number in the year under report, it must be remembered that Judicial sales have almost ceased. It will be observed too that, except in the Satara District, the number of simple money-bonds is greatly in excess of the mortgage bonds and even of the mortgages and sales combined. It would not, therefore, seem to be the case that the savkars invariably insist upon getting sale deeds or mortgage deeds passed to them before making advances.

How many of the bonds, etc., executed during the year were merely renewal bonds and how many evidenced *bonâ fide* cash transactions it is impossible to say, because no trust can be placed in the recitals contained in the instruments themselves. Judging, however, from the

recitals merely, I find that out of a total of 47,809 simple and mortgage bonds (for which the information is given) 38,088 are said to have been passed on account of entirely fresh transactions, 8,902 for old debts, and 819 partly for fresh advances and partly for old debts. I believe that a much larger number should be referred to this latter category of mixed transactions, for I know that lenders are in the habit of making the ratification of the prior debt a condition of the fresh accommodation.

Sales of Court-fees and General Stamps.

57. The following is the information I have been able to procure regarding the sales of Court-fee labels and general stamps :—

Districts.	Sales of Court-fee Labels.			Sales of General Stamps.		
	1879.	1880.	1881.	1879.	1880.	1881.
	R	R	R	R	R	R
Poona	1,56,996	1,14,126	1,21,954	75,805	76,455	65,523
Satara	1,11,912	73,933	66,771	86,457	82,125	50,557
Ahmednagar	92,359	56,513	65,745	67,844	47,834	32,924
Sholapur	62,931	38,733	46,036	72,114	30,327	24,952
Total .	4,24,198	2,83,305	3,00,503	3,02,220	2,36,741	1,73,956

The figures for 1879 and 1880 were kindly supplied to me by the Collectors. Those for 1881 by the Mamlatdárs and purport to be complete till about the 20th December 1881. Notwithstanding the remission of Court-fees in account and redemption suits and the reduction of the fees by half in suits tried under Chapter II, it seems there has been an increase in the sales of Court-fees. But there has been a considerable decrease in the sale of general stamps, which makes it clear that comparatively very few documents were executed in the year under report.

Cultivation Returns.

58. I had intended to lay before Government some information which I had collected relative to the cultivation returns; but from Government Rssolution No. 142 of the 17th January, lately received, I find that Government have already been at the pains to call for special returns on this subject and have recorded their opinion to the effect that the decrease in the area under cultivation in the Deccan Districts is attributable to the late famine and not to the operation of the Deccan Agriculturists' Relief Act. The decrease in 1880-81 as compared with the preceding year is very trifling.

Information procured from Savkars.

59. The information procured from savkars is not very reliable. A few savkars in each taluka were invited to furnish statements showing the vicissitudes in their dealings with agriculturists during the last five years. Some responded to the invitation and submitted statements of their dealings. Others shewed a reluctance to do so. The information thus gathered goes to show that their dealings with agriculturists since the famine have been considerably restricted, but by no means that they have wholly ceased. They continue to lend on credit to solvent ryots, and they even make advances in doubtful cases in the hope of partially recovering their outstandings. Most of the savkars complain of the difficulties in the way of realizing their debts caused by the Deccan Agriculturists' Relief Act and the amended Civil Procedure Code.

Enquiries made by Subordinate Judges.

60. The enquiries made by the Subordinate Judges while on circuit concerning the condition of the agriculturists in a few selected villages have led to the accumulation of a mass of valuable information which I have not yet had leisure properly to digest. The general conclusions, however, to which the information points, seems to be (1) that the ryots are overburdened with an intolerable load of paper debt outstanding against them; and (2) that in average years the ordinary Deccan ryot does not gain enough from the produce of his fields to pay the Government assessment and to support himself and his family throughout the year, so that really no margin is left for the payment of his debts.

Extent of Indebtedness and Poverty of the Cultivators.

61. Some idea of the extent of the indebtedness of the agriculturist classes may be formed from the following figures. The value of the claims in the applications made to the Conciliators during the one year under report amounted, as has been seen, to nearly forty-five lakhs of rupees. During the year 1880, 116,000 old mortgage deeds

were presented for registration under Section 71 in the Satara District alone. Many others were kept back for various reasons. The amount of all these old unregistered mortgages cannot be set down at much under one hundred lakhs of rupees. The value of the outstanding registered mortgages for sums above R100 probably considerably exceeds one hundred lakhs. The Subordinate Judge of Tasgaon in the Satara District, in summing up the results of a careful inquiry, estimates the total debts of the agriculturists in that taluka, which conntains only 49 villages, at not less than thirty lakhs (equal to about eighteen times the assessment of the taluka), of which he says more than two-thirds is secured on mortgage. Four-fifths of the ryots are in fact deeply embarrassed; and most of the valuable and in the district is held in mortgage. The ordinary jiráíat land d oes not really offer any security for debt, as it can hardly be said to have any selling value in the market. The savkar then has only the crop to look to, and this is a precarious security owing to the uncertainty and irregularity of the rainfall. During the last two years, although the crops have been in most parts fairly good, the very low prices that prevail leave no margin of profit to the cultivator. He can perhaps pay the Government assessment and support his family for a portion of the year. He cannot, however, pay his savkar. As the assessment and the debtor's maintenance are the first charges upon the crops, the savkar can hope to gain nothing by proceeding against it. The ryots' debts have increased and multiplied since the famine. The money-lender's resources have been diminished and crippled from the same period and from the same cause, If the debtor cannot afford to pay, the lender cannot afford to lend. The ryot is practically insolvent and his insolvency leaves the lender helpless. This, it appears to me, is the real and at all events the principal reason why the operations of the money-lender have so visibly contracted and why the ryot's credit is said to have diminished. The insolvent ryot has, properly speaking, no credit. Lending money to him is at best a risky speculation in which the money-lender must take his share of the risk. Perhaps they both look forward to the recurrence of an occasional bumper harvest at a time when prices range high. When such a time comes, many old scores are wiped off. It cannot, therefore, excite surprise if the money-lender is drawing in his horns and becoming by degrees more circumspect and wary. The above description applies to the insolvent ryots, who unfortunately form the bulk of the agriculturist community. The prudent and intelligent cultivator, who has kept tolerably clear from debt, stands on a different footing. His credit is unimpaired. He can borrow on easy terms for necessary purposes to the extent of his true means. The law allows full scope for enforcement of claims against really solvent debtors. The only security worth having, which the Act has taken away from the creditors, is the power which they enjoyed under the previous system to exact a life-long labour from their insolvent debtors by the threat of imprisonment and eviction. Though the land may have had no selling value, the debtor would fondly cling to it, and would remain thereon the bond-slave of his creditor. The old law and the new law both provide ample means for enforcing the payment of just debts against solvent but dishonest creditors. The new law has only interfered by taking away the power of putting undue pressure on honest but really insolvent debtors. The change cannot but be for the better. The true remedy for the hopelessly involved ryots is of course insolvency: but they are not educated up to this point. Meantime they are struggling on. Some of them still keep on good terms with their savkars. Others are endeavouring to be independent. Time only will show the issue. At present I merely wish to point out that the operation of the Deccan Agriculturists' Relief Act is not responsible, as some would wish to insist, for the difficulties of the situation, and that its tendencies are distinctly beneficial. I concur for the most part in the remarks made by Mr. Ranadé, which I have already quoted; and though the Act is by no means as perfect as I would wish to see it, I consider its success have been greater than could have been hoped for and that a continuance of the experiment is fully warranted. The provisions of Sections 7, 12, 13, 14, 16, 19, 20, 21 and 22 are especially useful, and I would gladly see them extended to Nasik and Khándesh where the conditions are much the same as in the four districts to which the Act applies. Subordinate Judges who have been transferred elsewhere speak in regretful terms of the equitable provisions of the Act which they leave behind them, and deplore the necessity they are under of having to pass so many *ex-parte* decrees, without full inquiry into the merits of the bond suits they dispose of. The great misfortune has been that the decisions of the High Court have crippled the usefulness of Sections 16, 20, 21 and 22.

Modifications of Revenue System.

62. Much may be done for the insolvent ryot of the Deccan [by modifications in the present rigorous system of collecting the assessment, by more liberal and elastic rules for the grant and recovery of Takavi advances, and perhaps by the gradual introduction of

agricultural banks. When prices are very low the fixed cash assessment presses on the people with undue severity: when prices are high they hardly feel the pressure. When crops fail and at the same time prices are low, they find it as hard to pay Government as to pay their savkars. The adoption of a sliding scale of charges would be productive, I think, of much good. I feel convinced from the experience I have gained in these districts during the last two years that a rigid revenue system is not suited to a deeply indebted and practically insolvent peasantry, which lives truly from hand to mouth.

Changes introduced by Act XXIII of 1881.

63. I must not conclude my report without alluding briefly to the changes that have been made by the Amending Act of 1881. The three most important alterations are the amendment of the definition of the word "agriculturist," the repeal of Section 71, and the removal of the prohibition of the appearance of legal practitioners before Subordinate Judges in case falling under Chapter II of the Act.

Amendment of the Act.

64. In amending the definition of "agriculturist" the Legislature went far beyond the recommendations of the Bombay Government. The change was effected by the substitution of the word "partially" for the word "principally." The original difficulty was to decide what persons were "agriculturists." The difficulty now is to determine who are not "agriculturists." The effect of the change is greatly to enlarge the operation of the definition and consequently to enlarge the operation of the most important provisions of the Act. The work of the Subordinate Judges, Conciliators and Village Registrars under the Act will be very considerably extended. Few persons in the Mufussil, be they professional money-lenders or pleaders, or Government officials or artisans, or petty traders or labourers, will be found who do not derive some portion of their means of livelihood from agriculture. Hence, all persons will share in the advantages or disabilities intended originally for *bonâ fide* cultivators. It was only because many *bonâ fide* cultivators were found to be excluded by a strict interpretation of the former definition that recommendations for its amendment were put forward. The change actually made is a very sweeping and serious one, and I doubt if its effects were thoroughly foreseen. It has, however, one advantage, namely, that it does not leave much room for doubt or for diversity of practice. But it is feared that it will encourage a tendency to avoid and evade their just liabilities on the part of persons who have no claim to special consideration or protection.

Amended definition of agriculturist.

65. The repeal of Section 71 was an unavoidable necessity. If the section had been at first framed differently, it might have served a very useful purpose, but, as drafted, it was practically unworkable, and the advantages it contemplated were only attainable by means of its immediate application, which proved unfortunately to be impossible. The immense accumulations of documents which were presented under it for registration are now in the course of being returned to their owners.

66. The removal of the prohibition to employ pleaders in suits under Chapter II, which constitute nearly three-fourths of the entire litigation of the district, is distinctly popular, the enforced absence of pleaders and the hopeless ignorance and helplessness of the parties, whether plaintiffs or defendants, necessitated in the interest of fair play and justice the frequent adjournment of cases, and the Subordinate Judges had often themselves to take up the role of legal advisers. The poor agriculturists, too, were often forced to throw themselves into the arms of ignorant and greedy pettifoggers who first fleeced them and then mismanaged their cases.

Pleaders.

One of the greatest and most pressing wants of the illiterate and impoverished agriculturist litigants is the absence of legal assistance and advice, especially in connection with the large number of account and redemption suits to which the policy of Government has given so great an impetus. I entertain a strong and growing conviction that Government ought to appoint a paid Government vakil in each taluka for pauper agriculturists. The need for such an appointment seems to me very urgent. The salary of the posts need not be high, for now-a-days the gains of legal practitioners in the Mofussil are very small. Each day's post brings to me numerous applications from distressed cultivators detailing their circumstances and begging for relief. I can only refer them in general terms to the Conciliators or Courts, but I feel it would be a great boon if I could refer them to an official whose duty it would be to give them appropriate advice. I have discussed this question with many Subordinate Judges who warmly approve of the idea. I would respectfully commend this subject to the favourable and attentive consideration of Government.

67. During the past eighteen months I have had occasion to submit several reports on the subject of amending the Act. Several of my suggestions were approved and adopted. Many others, however, were not entertained by Government. It is a matter of the deepest regret to me that Section 16 of the Act was not amended so as to allow mortgage-debtors to sue for a simple account, and Section 20 so as to allow them like other debtors the privilege in proper cases of paying off their debt by instalments. The conciliation chapter, too, needed amendment to make it thoroughly efficient. One great danger, which I wished to provide against by the amendment of the Act, can, I now perceive, be sufficiently met by the enactment of a rule by the Local Government under Section 49. A conciliation agreement once sent by the Conciliator to the Court and duly filed becomes an unappealable decree, which may be enforced by all the compulsory processes at the disposition of the Court at any time within twelve years. Under the present system there is not the slightest check against the very palpable danger of personation of the debtor or even against collusion between an unscrupulous Conciliator and a creditor to set up an agreement purporting to be duly signed by the debtor. There is also no safeguard against the fraudulent tampering with or alteration of the agreement during transit from the Conciliator to the Court. The law indeed provides that notices shall be delivered by the Conciliators to the parties calling on them to show cause to the Court within one month from delivery of such notice why the agreement should not be filed in Court as a decree. But there is no guarantee that the agreement was either executed by the debtor or that the notice was even delivered to him. Again, the one month's period dates from the *delivery* of the notice, and if delay takes place, as occasionally happens, in the transmission of the agreement, the period may expire before the agreement reaches the Court. Now, the present practice, which is in accordance with the literal directions of the section, is for the Conciliator to hand the written notice to the parties. This is certainly the simplest and easiest mode of effecting delivery of the notice: but it affords no safeguard. It does not ensure that the right party was present at the agreement or received the notice. An easy door is open to fraud and collusion. Now although personal face-to-face delivery of the written notice is the simplest and easiest mode of delivery, it is not the only mode of delivery. The section is silent as to how the delivery of notice is to be effected. Government may, therefore, make a rule as to the manner in which such notices should be delivered. I beg to recommend that a rule be forthwith made under Section 49 directing that the notices referred to should invariably be delivered through the Subordinate Judges, to whom also the agreements are sent, and that the notices should accompany the agreements. The Subordinate Judges will then serve the notices on the parties through the Court establishment, and will satisfy themselves in the usual manner that such notices are duly served upon the right parties, and the month's period will then count from the open and public delivery through the Court and not from the private delivery by the Conciliator. There will thus be time for the Court to scrutinize the agreement and for the parties interested to put in an appearance if so minded. This, I venture to observe, is an obvious precaution which should not be neglected, and the necessity for its observance has been forced upon my attention by actual facts. In three or four cases during the year debtors have complained to me that they were never present when the agreements entered into in their name were completed and sent to the Court and that they never received a written notice. In other cases the Subordinate Judges have told me that they do not believe that some of the agreements sent to them could have been knowingly entered into by the parties who were said to have made them. In two cases the agreements after leaving the Conciliator were fraudulently tampered with and altered in transit to the Court. Therefore I say that the notices should be issued and delivered after the arrival of the *kabulayat* at the Court, and that the Conciliators should be directed to effect delivery of them through the Court. The fees levied on agreements should be regarded as process-fees for the due delivery of the said notices. The necessity for this rule is acknowledged by my Assistants, Messrs. Ranade and Bhide. The issue of the rule by Government under Section 49 will be quite legal, as it is a matter affecting the Conciliators' procedure only.

Circuit System.

68. In concluding my report I would wish to refer briefly to the system of the Subordinate Courts travelling on circuit in their talukas. I consider that on the whole the advantages of the system are outweighed by its disadvantages. Much valuable time is wasted in mere travelling. In some Courts four or five working days in the month are thus wasted. The system leads to much longer adjournments and consequent delays in the disposal of cases than would otherwise occur. Parties who engage pleaders are put to greater inconvenience and expense and the general work of the Court suffers. In some talukas the scheme works

better than in others, but I do not think it should be made compulsory in all. The District Judges share, I believe, my opinion on this subject, and it would be well to leave them full liberty of action regarding the extent to which the system should be in future enforced within their districts.

I think I have now touched upon all the points connected with the administration of the Deccan Agriculturists' Relief Act which it has seemed to me necessary to bring to the notice of Government.

No. 140. *Extract from the Proceedings of the Government of Bombay, Judicial Department,—No. 2988, dated Bombay Castle, the 13th May 1882.*

Read—

Letter from Dr. A. D. Pollen, Special Judge under Act XVII of 1879, No. 60, dated 4th February 1882—Submits a report for the year 1881, concerning the operation of the Deccan Agriculturists' Relief Act in the four districts to which it applies, *viz*, Poona, Satara, Ahmednagar and Sholapur.

RESOLUTION.—Dr. Pollen has furnished a clear and interesting report on the working of the Deccan Agriculturists' Relief Act during the year 1881. It contains much valuable information both by statistics and by administrative details, and offers a more matured opinion on the results of this remedial legislation in the four districts to which it applies.

2. There are 30 Subordinate Judges in charge of 36 Subordinate Courts in these four districts—Poona, Satara, Ahmednagar and Sholapur.

3. The number of suits instituted was 16,542, as compared with 11,795 in 1880, the increase being general in all the four districts: but this number is still far short of the average of the previous ten years, namely, 36,106. The Special Judge attributes the increase over the number in the preceding year partly to the large number of account and redemption suits instituted in consequence of the stimulus given by the remission of Court-fees on such suits, and partly and specially "to a general and gradual reaction from an abnormal condition of things prevailing in the previous year." On this point Dr. Pollen says—

This, I think, sufficiently disposes of the idea that there has been anything in the nature of a permanent scare, produced by the operation of the Relief Act, among those who were in the habit of resorting to our Courts. It is true that the numbers of suits still falls very far short of the average of the previous ten years, but this may now, I think, be ascribed without any hesitation to two principal causes, first and mainly to the conciliation system which intercepts in its initial stages a vast amount of threatening litigation, and, secondly, to the enlargement of the limitation period. The decrease may still also perhaps be due in some slight, but in a *very* slight degree, to the distrust and uncertainty produced by some of the novel provisions of the Act. The preponderating effect, however, of the conciliation system in this direction will be apparent from the statistics of the system itself hereinafter given; but it may also be judged from the figures in Appendix D regarding the work in those talukas in which the conciliation system was discontinued during the year 1881. In such talukas the work of the Courts has more than doubled. The Khed Taluka of the Poona District, in which the conciliation system was abolished early in 1881, furnishes a very striking instance. In the Khed Subordinate Court the number of suits rose from 447 in 1880 to 1,189 in 1881—which figure is nearly equal to the average of the five years preceding the passing of the Act. It may be said, therefore, when the number of suits filed during the year is considered in connection with the number of cases settled by conciliation, that the litigation of the year has almost recovered its normal proportions, and that in this respect the disturbing effects of the Act have been much exaggerated and are in reality comparatively insignificant.

4. Of the 16,542 new suits instituted during the year, 11,607 or 70 per cent. fall under Chapter II of the Act, and are, therefore, within the revisional jurisdiction of the Special Judge. Of the above 11,607 cases, about 47½ per cent. were purely "agriculturist cases" as compared with 36 per cent. in 1880, and this increase in agriculturist cases is relied on as confirming the conclusions quoted above. It is also pointed out that the recently amended definition of the term "agriculturist" will now augment the number of such cases.

Section 16 of the Act.

5. During the first few months of the year there was a rush to the Courts of agriculturist debtors eager to demand from their creditors statements of account to be investigated and ascertained according to the equitable provisions of the Act, the institution fees on such suits having been remitted by the Government of India. The report describes at some length the check given to such suits by a decision of the High Court to the effect that, in mortgage cases, the remedy by way of a simple account suit under section 16 is inapplicable, and that, in mortgage cases, permission to pay by instalments cannot be allowed to the debtor, and explains the reasons why a suit for redemption is not equally suitable and effectual. Further experience has strengthened the Special Judge's opinion that an amendment of Section 16 of

the Act, as previously recommended in earlier reports, is urgently called for. The necessity of pressing an amendment of this part of the Act has recently again received the earnest consideration of His Excellency the Governor in Council. What Dr. Pollen says of the vast extent of old mortgages and of the great importance of relieving the Deccan Districts of these burdens supplies an additional reason for regretting that Section 16 was not made applicable to redemption suits, so far as to provide for redeeming mortgages by instalments.

6. Chapter II of the Act contains special rules of procedure applicable to certain descriptions of suits. All account suits irrespective of their pecuniary value or limit fall under that Chapter, but not redemption suits when the amount of the mortgage money exceeds R100 unless instituted in the Court of a First Class Subordinate Judge when the limit is R500. But the provisions of Chapter II may be made applicable by the consent of the parties to suits of the specified descriptions which exceed R100 but do not exceed R500 in value when instituted in the Court of a Second Class Subordinate Judge. The number of cases in which such consent was given was only 143 for the whole year.

7. Ten thousand and sixty suits falling under Chapter II of the Act were disposed of during the year, leaving a balance of 3,658, including arrears of the previous year. The number of *ex-parte* decisions, which fell in the previous year from 90 per cent. to about 12 per cent., has this year been reduced to 5·9 per cent. of the total number of suits.

Litigation.

8. In 796 suits, the past history of the transactions between the parties was investigated under Sections 12, 13, 14 of the Act, and the result was that sometimes the creditor's claims were reduced slightly, sometimes considerably. Creditors are stated to have been on the whole fairly satisfied. Calculations made by Mr. Ranade in 193 cases showed that the reduction averaged 26½ per cent. of the amount claimed. The Subordinate Judges all speak in the highest terms of the general operation of these three sections which are considered by the Special Judge to be the most important and successful part of the whole Act.

9. The average duration of suits for the four districts was admittedly exceedingly high being three months and ten days. Several reasons of more or less weight are tendered in explanation. Government trust that the Special Judge will impress upon all the Subordinate Judges the necessity of doing their utmost to reduce this very high average.

Duration of Suits.

10. It is pointed out in the report as very noteworthy that, in no case falling under Chapter II has any use been made of the provisions of the second paragraph of Section 22, which authorize the Courts to make over the management of a debtor's immoveable property to the Collector for seven years for the benefit of the judgment-creditor. Dr. Pollen does not anticipate that much use will ever be made of this provision, because it will be of no advantage to creditors to move the Courts for the necessary orders when applying for execution against *insolvent* judgment-debtors, who, in Dr. Pollen's opinion, form the bulk of judgement-debtors. But the words of Clause 2 of Section 22 are "the Court may, *when passing a decree* or at any subsequent time," etc., and the Special Judge should explain whether it is not clear that the Court was meant to act spontaneously and not to await the motion of the creditor.

Insolvent Agriculturists, Section 22, Clause 2.

11. It further appears that the first clause of Section 19 which authorizes the Courts to discharge the judgment-debtor when his debts are less than R50 has been almost inoperative, and that the second clause of the same section which empowers the Court to direct insolvency proceedings to be taken with respect to a judgment-debtor whose debts exceed R50 has likewise remained a dead letter. The Special Judge states—

Insolvent Agriculturists, Section 19.

The fact is, the law is somewhat defective and as it provides no means for forcing insolvency proceedings on an unwilling debtor . . . . The Court may *direct* proceedings to be taken, but it cannot speed the proceedings to their legitimate issue. . . . . . . If, therefore, any effectual use is to be made of this section, the Courts must be empowered to take all the necessary steps of their own motion and to enforce the attendance of both creditors and debtors and the payment of process-fees must be dispensed with.

It appears to His Excellency the Governor in Council that the second clause of Section 19 was intended to be worked spontaneously by the Courts and not to depend on the activity of the debtor, and if for the reasons stated in the report a Court cannot take all necessary action of its own motion, an amendment of the law in this direction seems desirable. The opinion

of the Legal Remembrancer should be requested on this point. This matter and the points dealt with in paragraphs 5 and 10 above are of the first importance with regard to the success of the Act in clearing the Deccan agricultural class of its load of old debt which is referred to in the report as weighing the country down.

Insolvent Agriculturists, Chapter IV.

12. The provisions of the Insolvency Chapter also appear to have proved inoperative—only ten applications having been presented during the year. Dr. Pollen remarks:—

The slowness of the people to avail themselves of this remedy is the more remarkable when it is remembered that the mass of the agriculturist population is steeped in insolvency. I think that ignorance of the true intention and of the real effects of the insolvency provisions is the main cause of the backwardness of the people. The Subordinate Judges for the most part assign religious scruples and the fear of losing their credit as being the two chief causes: but it seems to me that if the process were once familiarized to them by a few successful examples, there would be no hesitation on mere relegious grounds in freely resorting to it.

His Excellency in Council considers that sufficient attention is not given in the above remarks to the natural reluctance of agriculturists to get rid of their debts at the expense of surrendering the "occupancies" which provide their means of livelihood on the spot to which they are bound by many strong ties, and that it is by no means clear that such agriculturists would not be ready to effect a composition with their creditors if the retention of their occupancies were made a part of the composition.

Village Munsifs.

13. There were 136 Village Munsifs at the close of the year who disposed of 2,934 cases, but three-fourths of them had very little work and more than one-third none at all. Those who had work to do are stated to have done it satisfactorily, and the rules framed for their guidance have worked smoothly and well. The recommendation that the appointments of those who have been unemployed for two years should be cancelled, will be acted on. No sufficient ground has been shown for locating these petty tribunals in large towns where Subordinate Courts exist already, and it is evident that though popular with the humbler trading class, they are not resorted to by the agricultural population.

Conciliation.

14. Out of 69,531 cases disposed of by over 300 Conciliators, 24,185, or 35 per cent, were either dismissed for default or withdrawn; 8,577,* being 13 per cent., were disposed of by agreement or (in a few instances) reference to arbitration; and in 36,869 cases (the remaining 52 per cent.) conciliation failed. It is pointed out that of the latter 25,843 failed by neglect or refusal of the parties to appear, leaving no scope for conciliation, and it was only in the remaining 11,026 cases that conciliation absolutely failed after the parties had been brought to a hearing. Adding the absolute failures, 11,026, to the agreements and references, 8,577, it appears that 19,603 cases came fully before the Conciliators, and that in 44 per cent. of these conciliations succeeded and in 56 per cent. it failed. It is, however, impossible to rely only on these figures as a test of the success of conciliation. No satisfactory explanation is offered why the number of certificates given under Section 46 of the Act if conciliation fails, was about eight times the number of proceedings in which the production of such a certificate was necessary. This matter should not be allowed to escape attention, more especially as it has been alleged that such certificates have been put to an improper use.

* The total value of the subject-matter in these 8,577 cases was R5,60,032.

15. Mr. Ranadé has carefully compiled figures to show that the abatements in two of the four districts agreed to before Conciliators averaged over 25 per cent. of the amounts claimed, and considers that these results compare favourably with the reductions made by Courts under the equitable provisions of Sections 12, 13, 14 of the Act. He relies on these figures as satisfactorily refuting the allegation that the Conciliators simply give a legal sanction to the claims of creditors without scrutinizing them. But Dr. Pollen suggests that the abatements are frequently only apparent, and that claims are sometimes purposely enhanced to make the reduction appear imposing, and thinks that there is no guarantee in the system for that thorough investigation into the true merits of each case which would be secured by the application of the law in the Courts, though he considers that on the whole the agreements are good.

16. Dr. Pollen states his opinion that Subordinate Judges are perhaps the best of all Conciliators, and brings to notice the good services in this direction of Khán Sáheb Meherjibhai Kuvarji of Tasgaon, and Rao Saheb Jayasatyabodhrao Tirmalrao of Rahimatpur, and, as the best non-official Conciliators, of Rao Bahadur Chintamanrao Hari Deshmukh of Poona, and Mr. Shripat Trimbak of Chincholi.

17. The merits and the defects of the system of conciliation are impartially stated at length in paragraph 44 of the report. It is satisfactory to learn that both Mr. Ranadé and Mr. Bhidé testify to the usefulness of the system, and that the Special Judge is himself of opinion that where the Conciliators are efficient the system may fairly be held to have done much good. But His Excellency in Council considers that it would be still too early to pronounce a definite opinion on the success of this system. The irregular practice referred to at the end of paragraph 44 requires careful watching. The mere fact that it is possible, under the existing law, to obtain what is equivalent to a registered bond with a decree already attached by means of a collusive dispute before a Conciliator and without registration, stamp or litigation, shows the necessity of careful supervision.

Registration.

18. The question of registration during the year under notice has been already separately dealt with by Government in their Resolution No. 142 of 11th January 1882: orders have recently been issued for an important modification of the scheme by the substitution of stipendiary registrars for kulkarni registrars, and the Inspector General of Registration has been instructed to draw up a scheme for extending the operations of his Department to the registration contemplated in the Deccan Agriculturists' Relief Act. Dr. Pollen makes a few suggestions to which the attention of the Inspector General of Registration should be invited with reference to Government Resolution No 8133 of 12th December last in this Department, but there is nothing in the remarks on this head which calls for further notice from Government at present.

Statements of Account.

19. His Excellency in Council notices with regret that Chapter IX of the Act is stated to be a dead letter. Under the provisions of this Chapter, agriculturists are entitled to receive written receipts and annual statements of account from creditors and to have their accounts made up from time to time in a pass-book; but the Special Judge has not heard of any instance of statements of account or pass-books being demanded from creditors, and he fears that the people are mostly ignorant of these important provisions made for their benefit.

Changes introduced by Act XXIII of 1881.

20. The removal of the prohibition to employ pleaders in suits under Chapter II is stated to be popular. It is pointed out that in amending the definition of agriculturist the Legislature went far beyond the recommendation of this Government and thereby greatly enlarged the operation of the most important provisions of the Act.

Conclusion.

21. The conclusions to which this report points are that the credit of solvent ryots has not been impaired by any provisions of the Act, and that the best class of ryots can still obtain the capital they require for their agricultural operations. Fair litigation has not been obstructed, but the facilities for putting the Courts in motion in order to bring undue pressure on honest but struggling debtors have been greatly reduced, and so far one of the main objects of the Act is being attained. The institution of Village Munsiffs is shewn to be of no appreciable benefit to the agricultural population. It also appears that the system of entrusting the work of registration to kulkarnis is a dangerous one, and that the recent orders of Government as to substituting stipendiary registrars have not been issued too soon. It is clear that the conciliation system requires careful watching, being liable to abuse where the Conciliators themselves are not trustworthy. It further appears that Subordinate Judges are the best Conciliators.

22. Turning, however, to the condition of the ryots already over-burdened with debt, who are said to form a large majority, the report does not supply materials for deciding how far special legislation has averted from this class the danger of expropriation.

Dr. Pollen has gone out of his way to discuss the causes of this indebtedness and in doing so has fallen into some misleading expressions about the land assessment. A sketch of the transactions of an average Deccan ryot is given at page 164 of the Appendix I to the report of the Famine Commission which concluded after a careful inquiry that the land assessment in Bombay is only 7·6 of the gross produce. If Dr. Pollen's conclusions on this point were true insolvency would not be "the true remedy" as he elsewhere says, for even if they were once discharged from all obligation, the ryots could not live without fresh borrowing every year. Moreover, the system of collecting assessment is not now rigorous, for it is postponed whenever there is

sufficient reason, and more liberal rules as to takavi have been recently recommended to the Government of India. As to the real cause of the indebtedness of the ryots, Government are in possession of better information than can be obtained from unverified data. It is sufficient for present purposes to know that it was one of the objects of this special legislation to protect the ryots from being called on to suddenly repay debts, often accumulated by several generations, with the alternative of expropriation and the transference of ownership in ancestral holdings to another class of persons who would not cultivate them themselves.

On examining the report in order to ascertain how far the Act has been effectual in this respect it appears that a judicial interpretation of certain sections has seriously restricted their otherwise successful operation by preventing agriculturist mortgagors from obtaining statements from their creditors of their accounts framed under the equitable provisions of sections 12, 13, 14, and from obtaining permission to pay off the debts so ascertained by instalments. Little, therefore, has been done towards the redemption of the numerous old mortgages. In the opinion of His Excellency in Council there is strong ground for Dr. Pollen's recommendation that Section 16 of the Act should be amended, and this matter will be separately dealt with. It further appears that nothing has been done towards releasing bankrupt ryots from obligations which they no longer have the power to discharge by putting into operation the special insolvency provisions of the Act. The Special Judge considers that the law on this point is defective, but in the opinion of His Excellency in Council there is ground for holding that there has been a misconstruction of its provisions which appear to have been intended by the Legislature to be worked by the Courts spontaneously. There is however room for belief that bankrupt ryots will not voluntarily seek the benefit of any insolvency provisions that make a surrender of their occupancy rights a condition of discharge from their obligations.

23. It would be premature to pronounce on the absolute success of the Act in all its provisions, but sufficient experience has been gained to show that it has already corrected many of the scandalous abuses of the old law. His Excellency the Governor in Council is hopeful that when the suggested amendments have been sanctioned and the people become more aware of the equitable provisions of the Act, it will emancipate them from what has been truly described as predial serfdom and confer a lasting benefit on the country.

24. His Excellency the Governor in Council is gratified to notice that Dr. Pollen's Assistants have zealously and ably co-operated with him in the administration of the Act, and desire to thank him for his clear and interesting report.

25. Copy of this Resolution and Report should be forwarded to the Government of India.

From H. F. ASTON, Esq., Acting Under Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 5149, dated Bombay Castle, the 19th August 1882.

I am directed to address you on the subject of certain amendments in the Deccan Agriculturists' Relief Act, 1879, which appear to His Excellency the Governor in Council to be necessary in addition to those made in the amending Act XXIII of 1881, in order to remove certain defects in the Act.

2. Dr. A. D. Pollen, Special Judge under Act XVII of 1879, in his report on the working of the Act during the year 1881 suggested some amendments, the need for which was established by the further experience acquired during last year. Copy of this report and of the Resolution of this Government on it were forwarded to the Government of India with my letter No. 2988A., dated 13th May last.

3. It will be seen from the Resolution that the attention of this Government was specially directed to the question whether necessity for legislation had not been established in the following directions :—

(i)—Affirming the right of agriculturist mortgagors to sue for an account from the creditors under section 16 of the Act.

(ii)—Allowing such mortgagors to pay off their mortgage debts, ascertained under the equitable provisions of Sections 12, 13 and 14 of the Act, by instalments whether the decrees passed are those referred to in Section 16 or Section 20 of the Act.

(iii)—Making it clear that the Legislature intends the Courts to act spontaneously in directing insolvency proceedings, under Section 19, paragraph 2 of the Act, in case of hopelessly insolvent debtors, and providing any specific power necessary for the purpose.

(iv)—Making it clear that the Courts are intended to act spontaneously and not to await the motion of the creditor in making over the management of the debtor's immoveable property to the Collector for a period not exceeding seven years for the benefit of the judgment creditor, Section 22, Clause 2.

4. The above points are considered by this Government to be of the first importance with regard to the success of the Act in clearing the Deccan agriculturist class of its load of old debt, but before addressing the Government of India in the matter, further explanations were called for from the Legal Remembrancer and from the Special Judge on the last two points.

5. These reports were submitted by the Acting Legal Remembrancer in his letter No. 730,* dated 20th June 1882, and by the Special Judge in his letter No. 450, dated 12th ultimo, copies of which are appended. His Excellency the Governor in Council was also favoured with a copy of a note, dated 15th ultimo, by the Honourable T. C. Hope, C.S.I., containing his remarks on Dr. Pollen's report.

* Not printed.

6. A copy of this note is herewith forwarded, and it will be seen that it proposes legislative amendments in the direction already referred to above, as well as on some other points.

7. I am directed to state that His Excellency the Governor in Council concurs in all the legislative amendments proposed by the Honourable Mr. Hope in this note, as already stated in my telegram to you of the 25th ultimo.

These amendments are already summarized briefly in paragraph 42 of the Honourable Mr. Hope's printed note as follows :—

(*a*) Sections 3 or 50. Mortgage suits (*y*) and (*z*) to be placed under the superintendence and revision of the Special Judge.

(*b*) Sections 16 and 20. The former to be made applicable to suits under clause (*z*), and the latter to suits under clauses (*y*) and (*z*) of section 3.

(*c*) Sections 21 and 22. Both these sections to be made retroactive.

(*d*) Section 22, clause 2. To be improved in drafting.

(*e*) Section 19, or elsewhere. A clause or clauses to be added, so as to make it clear that the Court is to act under sections 19, 22, clauses 2, 29 and 30 of its own motion and to give it any specific powers necessary for the purpose.

(*f*) Section 40. Power to be given to the Conciliator to obtain the attendance of the opposite party.

(*g*) Section 46. A clause to be added rendering certificates invalid after a fixed period.

8. I am, however, to add as to the suggested amendment (*e*) that the distinction between the proceedings under section 19 and section 22 will be perhaps more clearly kept in view if the amendments proposed under (*e*) in the printed note are separated as follows :—

(*e*) (i) Section 19. A clause or clauses to be added so as to make it clear that the Court is to act of its own motion, and when it does so act under section 19, paragraph 2, is to act under sections 29 and 30 also of its own motion, and to give the Courts any specific powers necessary for the purpose.

(*e*) (ii) Section 22, paragraph 2. A clause to be added to make it clear that the Court is intended to act spontaneously and not to await the motion of the judgment-creditor to make over such management to the Collector.

9. I am further to state, with reference to the proposed amendment (*b*), that His Excellency the Governor in Council considers that experience has shewn that it is essential to the success of the Act that it should be provided in distinct terms that an agriculturist mortgagor may bring a suit for an account under section 16, such mortgage account being ascertained under the equitable provisions of sections 12, 13 and 14 of the Act.

10. In connection with this point I am to refer to the correspondence noted in the margin† (of which copies are herewith forwarded), as showing that the difficulty in the way of agriculturist mortgagors ascertaining the amount equitably due to their mortgagees without incurring the dangers involved in a redemption suit is one which cannot be removed without resort to legislation, and as shewing the necessity of providing that such mortgage debts may be liquidated by instalments.

† Not printed.

11. I am also to forward a copy of a letter No. 501,* dated 11th instant, from the Special Judge, suggesting four other amendments.

* Not printed.

12. One of these (Dr. Pollen's paragraph 5) is as to the omission of certain words from Section 68. As these words appear to be retained by oversight they might now be omitted.

13. As to the remaining three it is proposed (paragraph 3) that redemption suits should not be dismissed as premature on account of the period stipulated for redemption not having expired, when the debt has been already satisfied out of the mortgaged property.

This might be provided by a suitable addition to Section 13.

It is secondly proposed (paragraph 4) that the Special Judge should be empowered to make references under Section 617 of the Civil Procedure Code to the High Court.

A clause to this effect might be added to Section 54.

It is lastly proposed (paragraph 6) that the Special Judge should be empowered to control the proceedings of Subordinate Judges in the matter of filing or not filing agreements sent to them by Conciliators under Section 44 of the Act.

This might be effected by adding the words "and Chapter VI" to the words "Chapter IV in Section 50 of the Act."

14. His Excellency the Governor in Council is of opinion that the proposals of the Special Judge should be adopted.

15. In conclusion I am to request that the Government of India may be moved to take into consideration the amendments above proposed, and to take the necessary steps to have the defects in the existing law removed accordingly.

P. S.—Since this letter was drafted a letter has been received from the Special Judge, No. 512,* dated 15th instant, herewith forwarded, from which it appears that he does not now think that the Honourable Mr. Hope's proposed amendment (*a*) is desirable or necessary, but His Excellency in Council adheres to the opinion expressed in my telegram of the 25th ultimo and in paragraph 7 above, that the law should be amended in the manner proposed by the Honourable Mr. Hope.

* Not printed.

DECCAN AGRICULTURISTS' RELIEF ACT.

Note by the HON'BLE T. C. HOPE *on the Special Judge's Report for 1881.*

In accordance with the request of the Home Department, I submit the following remarks upon the report of the Special Judge (Dr. Pollen) on the working of the Act during the calendar year 1881, and the resolution thereon of the Bombay Government, No. 2988, dated 13th May last.

2. The Act was passed on the 29th October 1879. A small number of Village Munsifs (138) were appointed at various times between January and August 1880. The new Sub-Judges' Courts were not constituted till 1st June 1880. No Conciliators were nominated until between the 1st of May and 1st August of that year. Village Registrars were constituted from March 1st, 1880, but it soon became apparent that the rules and instructions for them had been insufficient and unsuitable; difficulties accumulated till they became insurmountable; the repeal of section 71 of the Act, abandoning in despair the registration of old mortgages, was deferred till October 26th, 1881, and the accumulated documents have only lately been pretty well got rid of. On the same date (by Act XXIII of 1881) some doubts of interpretation were settled, and verbal improvements made. Consequently, the year 1881, now reported on, was the first throughout which even the machinery of the Act was in tolerably complete order, while some of its most important provisions are not (as will be presently shown) in operation up to the present day. Until effect has been given to the whole Act, and the results during at least a year or two have been ascertained, the measure cannot be said to have had even an approach to a fair trial.

3. The instructions of the Secretary of State (Despatches Nos. 4 and 63 of December 26th, 1878) were to the effect that the relief of the Deccan ryot should be effected by a "comprehensive measure," which should (1) provide Courts more accessible, more absolute, less technical, less dilatory, and less expensive than the present ones; and (2) mitigate "the extreme severity of the law on debtors," and extend the powers of the Judges "to modify

* Printed on page 53 of the Selections.

the contracts entered into between man and man." In accordance with these instructions, coupled with some of the recommendations of the Deccan Riots Commission, Act XVII of 1879 contemplated—

(a) Courts having larger powers over smaller areas than before.

(b) Improved control over such Courts.

(c) Improved procedure on trial and in execution.

(d) Absolute relief of insolvents under certain limitations.

(e) Protective measures, *viz.*,—

conciliation between disputants, previous to litigation,

checks on fraud, by either debtor or creditor, in original transactions.

How far these objects have been attained I will now proceed to examine, referring, where necessary, to the Special Judge's Report for 1880, and other communications which have come before the Government of India.

Courts.

Subordinate Judges.

4. The Subordinate Judges' Courts were at first increased from 24 to 36, as promised in my speech when introducing the Bill on July 17th, 1879, so as to give a Court for each taluka except in one special instance. But only six months afterwards the Bombay Government observing a large falling-off in the number of suits filed, took away 7 out of the 12 Additional Sub-Judges, and "doubled up" their talukas with adjacent ones. Moreover, three other Sub-Judges are employed for a considerable portion of the year out of their proper charges, in assisting at head-quarters. This reduction was quite at variance with a main intention of the Secretary of State and the Act, that the Courts should be brought nearer "to the homes of the people." It was also premature, for the falling-off in suits filed proved to be temporary and it acted prejudicially to another main object of the Act—the speedy disposal of causes—since arrears* have been accumulating in almost geometrical progression, and now amount to above four months' work. The withdrawal of Sub-Judges from their proper charges has a similar effect, as may be seen in the case of Shrigonda, where suits take six months and ten days *on an average*, because the Sub-Judge can only go there for a short time twice or thrice a year. I trust that the full number of Sub-Judges may be restored without delay, and that where the work is too heavy for one Sub-Judge, an extra man may be allowed.

		Suits under Chapter II.
* On January 1st, 1880	.	1,102
" 1881	.	2,071
" 1882	.	3,658

5. The attempt to bring the Courts still nearer to the homes of the people, by the Sub-Judges going on circuit within their limits, appears to have resulted in delay and expense to litigants. This is partly owing to imperfect working of the system; but, on the whole, the forecast given in my speech of October 24th, 1879, has been verified. I concur with Dr. Pollen (paragraphs 21 and 68)† that circuits should be restricted to localities specially adapted to them; but I would ascertain and fix these, instead of handing over the matter to the discretion or idiosyncrasies of individual District Judges.

6. Another mode of making the Courts more accessible to the people was the enlargement of Sub-Judges' powers, which the Act effected. The exercise by second class Sub-Judges of what are called "Small Cause Court powers" up to R100 or to R500 with consent of parties, and the inclusion of mortgage cases in this jurisdiction, do not appear to have led to any of the evils which were predicted. The total number of suits for between R100 and R500 is not given, so the proportion of such consent cases cannot be ascertained, but it is said to be small. The fact, however, that 77 per cent. of the consent cases occur in five Courts only, shows that of the causes for paucity of consents assigned by Dr. Pollen (paragraph 11) the ignorance of the people is the chief. I think that Sub-Judges, and more especially Conciliators, should be directed to impress on intending litigants the advantages which trial by their local Court, instead of by the higher distant one, will confer.

Village Munsifs.

7. The institution of Village Munsifs has only a limited connection with the relief of agriculturists. That these Munsifs are chiefly resorted to by the non-agricultural classes need excite no surprise, for it was well known, and stated in my speech of June 17th, 1879, that the bulk of suits disposed of by Village Munsifs in Madras are not between usurers and ryots. The question of establishing Village Munsifs' Courts was brought to the notice of the Bombay Government in paragraph 14 of the letter from the Government of India (Home Department),

† Wherever Dr. Pollen is thus quoted by paragraphs, the reference is to his Annual Report for 1881 under review.

No. 222 of February 26th, 1879, and Sir Richard Temple, in his Minute of 14th April 1879, remarked as follows:—

After making every reasonable abatement, I do not doubt that much real work is thus done (in Madras) to the great convenience of the people, and that the status and character of the village headmen are thereby raised, generation after generation. I am willing, indeed anxious, to attempt the gradual introduction of this plan into the Bombay Presidency.

* * * * *

The value of the cases thus entrusted to such village tribunals would be small—ten rupees in each case. Such cases would be between ryots and farm-labourers, or shopkeepers, or artisans, and the like. The disputed transactions between money-lenders and ryots would not be included in this catgory—most of these cases would be for amounts exceeding ten rupees. * * * But they would dispose of much petty business which now goes to the Civil Courts, occupying some of the time of those Courts.

My own view may be gathered from the fact that Village Munsifs had no place in my original draft of the Bill, and from the remarks in my speech of June 17th, 1879. I did not expect much good, but I feared no harm from their institution.

8. I now find that they have had a popularity and success which I never anticipated. Mr. Ranade says:—

There can be no doubt of the popularity of this office, and the inhabitants of several places have applied for the services of such officers.

As to efficiency, Dr. Pollen reported last year (No. 255 of 13th March 1881, paragraph 25) that—

most of the Village Munsifs are respectable and intelligent men, and have done their work and kept their records in a satisfactory manner. Many instances occurred in which plaintiffs have waived considerable portions of their claims in order to bring them within the jurisdiction of Village Munsifs;

and again this year—

Those who have had work to do have on the whole done it in a very satisfactory manner. There have been very few complaints against any of them. I recommended the cancellation of one appointment, as I had reason to believe that the work was not done impartially—otherwise I had no reason to find fault. The suits disposed of were of a very simple character, and were mostly uncontested. In the few contested cases the decisions seemed to be proper.

Although there were only 138 Munsifs in 1880, and 136 in 1881, they disposed of 2,866 and 2,934 cases in the two years respectively.

9. The results of this extremely limited experiment—there being 4,650 villages in the districts under the Act, but only 136 Village Munsifs,—seem to me such as to justify the extension of the institution wherever competent men can be found. It evidently supplies a hitherto much-felt want in the settlement of petty disputes, it relieves the regular Courts to some extent, it tends to restore the *status* of the village headmen, and to foster honorary agency and local self-government. I therefore observe with regret not only that no extension is contemplated, but that the Special Judge has recommended, and the Government of Bombay have approved, the cancelment of the appointments of those who have done no work in the last two years, and the refusal of Munsifs to the taluka towns and trade centres. But the usefulness of a Justice of the Peace in England does not solely depend upon the amount of criminal work he is actually called upon to do, nor have the County Courts been considered failures because they are resorted to by litigants whom the previous costly and complicated system kept out of court. I feel no doubt that more men fit for the office could now be found with the aid of the District Officers, and that their number will increase in future in response to the demand.

Improved control over Courts.

10. *Section 7 and Chapter VII* of Act XVII of 1879 substituted the control of "revision," by a Special Judge and his Assistants, for that of appeal. This reform, which had, at the time, the approval of Mr. Justice Maxwell Melvill and four other Judges of the Bombay High Court, has most amply justified the anticipations of its advocates. Dr. Pollen, confirming his favourable opinion of last year, states as follows:—

At each visit of inspection to a Subordinate Court all the records then in the Court of suits and proceedings falling under Chapters II and IV are carefully scrutinised, irregularities noticed and appropriate orders issued to the Subordinate Judges. Cases calling for revision are set apart for fuller investigation. During the monsoon the cases sent to the record rooms of the District Court are similarly examined. In this way about 75 per cent. of all decided cases are subjected to careful scrutiny. I am of opinion that all the advantages expected from this system have been thoroughly realised, and that the chances of failures of justice are thereby minimised. * * The people are showing themselves keenly sensitive of the advantages of the revision system, which provides a surer and more constant, as well as a cheaper, safeguard against injustice and error than that afforded by the costlier and more tedious process of appeal which, as a rule, was a luxury which only the rich were able to indulge in.

The cases scrutinised thus amounted to 75 per cent. instead of 30 per cent., which was the most I ventured (October 24th, 1879) to rely upon as a substitute for appeals averaging 3 per cent. The cases actually taken up for revision were 2 per cent., of which $1\frac{1}{2}$ per cent. were on petitions.

11. Dr. Pollen points out (paragraph 9) that whereas *all* suits for an account without pecuniary limit come under his revision, only about one-half of the redemption suits do so. There can be little question, especially since the success of the revision system is now established, as to the expediency of his having under him all suits of the descriptions mentioned in section 3, clauses (*y*) and (*z*), which are dealt with under sections 12 to 15, and this should be provided for by legislation at the first suitable opportunity. The effect of this, it should be clearly understood, will merely be to substitute revision for appeal in these suits when above R500 in value, and so to ensure their being treated on the same legal principles as suits of lower value. It will not be to transfer them from the full procedure of the Civil Procedure Code to the more summary processes which the Act affords to the latter. The reason for adopting this course in respect of suits above R500 under (*y*) and (*z*), but not of those under (*w*) and (*x*), obviously is, that in the latter agriculturists are invariably concerned, whereas in the former they neither necessarily nor usually are so.

Improved procedure.

12. *Section 7, Clause 1*, of the Act contemplates the final disposal of suits at the first hearing, as far as may be possible. Considerable progress has been made in reducing the duration of suits. The average period is said now to be 3 months and 9 days, but what the maximum and minimum may be does not appear. We are thus still very far off what was hoped for, and as arrears are increasing, we shall get further, instead of nearer. Dr. Pollen, mentions (paragraph 21) various causes of delay, mostly temporary, to which a certain weight may be attached. But the real cause is, that technicalities are still rampant. In paragraph 61 of his No. 386 of June 7th, 1880, he observes —

It rarely happens, even in the simplest cases, that the personal attendance of the plaintiff is required less than six times in the progress of a suit; and on most of these occasions it is only to perform some purely formal or ministerial duty.

I do not wonder that he adds—

I find much warm feeling, I might say discontent, on this point; and I think the grievance is a real one.

So do I; but I would earnestly recommend the Special Judge and Local Government to strike at the root of it. The Special Judge should censure in every instance in which the intention of section 7, that cases should be disposed of at the first hearing, has been unnecessarily departed from, and might also find means for conducting mere formalities through the machinery of the Court, as already suggested by Mr. Naylor in paragraph 31 of his No. 1091*, of 26th August 1880. The Local Government might devise and obtain the adoption of a system of consolidated fee to cover all the expenses of an ordinary suit. In the absence of the simplified procedure in petty cases, which I trust will some day relieve all India, these remedies are still open.

13. *Section 7, clause 2.*—This important clause, for suppressing *ex-parte* decisions, has been very successful. Such decisions, which formerly were passed in from 57 to 74 per cent. of all suits, and in from 93 to 97 per cent. of money suits only, are now said (paragraph 14) to have fallen to 5·9 per cent. I cannot quite reconcile this figure with those in Dr. Pollen's two preceding paragraphs, and it is not so very much lower than that prevailing in some parts of Northern India without the aid of special legislation. It would be interesting to know the reasons for such *ex-parte* decisions, and non-examination of the defendants, as occurred. It is only by such detailed scrutiny that the real working of the Act can be ascertained. Still, the immense improvement effected is most gratifying, as are also the following remarks by Dr. Pollen (paragraph 14) :—

The Subordinate Judges, many of whose views on other points are widely divergent, are unanimous in the approbation which they accord to the provisions of this section, which renders the personal attendance of the defendant compulsory, and thus facilitates the fair decision of the suit. Defendants are still very often recalcitrant, and cause much trouble and delay to the Courts; but, on the whole, they are beginning to realise the advantages of their personal attendance, and are showing more willingness to attend at the first summons. It will be seen that the number of personal examinations of defendants more than covers the total number of admitted and contested suits. In my opinion section 7 has proved an unmixed advantage.

14. *Section 8.*—The report is silent as to how far written statements are now admitted by the Courts. Information would have been interesting in connection with the question of over-technicality

* Not printed in the Selections.

15. *Section 9.*—This dispenses with detailed record of evidence in suits where the subject matter does not exceed ₨10. It appears (paragraph 31) that, through the action of the Village Munsifs and Conciliators, the number of these suits filed in Subordinate Judges, Courts has fallen to 521, or about one-twentieth of the total, instead of one-sixth or more, at which proportion it is believed to have stood formerly. But no information is given as to the working of the section, which is important because, if it has been successful, its extension to suits for not more than ₨20, which form 36 per cent. of all suits for money, will be highly desirable.

See paragraph 7 of my Note forwarded to Home Department with Memorandum dated 10th May 1879.

16. *Pleaders.*—Dr. Pollen continues to urge (paragraph 66) the appointment of a paid Government pleader in each taluka for pauper agriculturists. I may here record, with all respect and deference, my regret that the Legislature should in 1881 have repealed the provisions of section 68, passed in 1879 after the fullest debate, by which pleaders were excluded from suits before Sub-Judges in which the amount or value did not exceed ₨100. For any difficulties which the Courts may have at first experienced, the proper remedy seems to me to lie, not in the admission of pleaders to petty suits, but in the abolition of the delays and complications of procedure which are supposed to render their assistance indispensable. Taking the statement by Dr. Pollen given above in paragraph 12, it would surely be better to dispense with the appearance of the plaintiff six times for purely formal and ministerial duties than to oblige him to pay a pleader to take his place. But, as the Legislature has held otherwise, I now would strongly support Dr. Pollen's recommendation of a Government pleader for each taluka.

17. *Execution of decrees.*—The information on this important question (paragraph 23) is very meagre. Some of the grosser abuses in execution were mentioned in my speech on 24th October 1879, when moving the amendment to section 39. The use of decrees *in terrorem* or for the fraudulent attachment of the property of third parties, the collusive return of warrants unexecuted, the suits arising out of execution, the sale of moveable property for a mere song, the duration of unsatisfied decrees, the nature of private adjustments certified through the Courts or otherwise—all these are matters which require constant vigilance, and systematic schooling of the lower Courts, before any permanent improvement can be attained.

18. *Costs of litigation.*—Here we are promised (paragraph 22) further information which is greatly needed. The costs in original suits in the four districts under the old system according to the latest returns I possess (1872), amounted to the percentages on the value of the suits which are given in the margin. Costs in appeal came to 13½ per cent. more, and then followed costs in execution amounting to 22 per cent. on the sums realised. As the 10 per cent. mentioned by Dr. Pollen is, apparently, for costs in original suits only, we may well agree with him that "the costs are greater than they should be." After all the reductions in stamp duties and other fees made by Government, this is indeed a poor result!

	₨	A.	P.
Poona	14	6	11
Ahmednagar	13	0	3
Sholapur	16	8	1
Satara	14	12	5

19. In connection with this, and points previously touched upon, I would suggest that a set of returns not less complete than those to be found in the Appendix (Chapter III) to the Bombay Administration Report for 1872-73 should be obtained and thoroughly scrutinised, so that the real causes of excessive expense may be exposed and dealt with. The process fee accounts of the several talukas should also be periodically examined, so that excessive charges may not occur, as in the instances cited at the conclusion of my speech (October 24th) on the passing of the Bill. If an able and experienced Revenue officer were put on special duty for six months during next cold weather, to look into these and the numerous other points suggested by the Secretary of State in his Despatch* No. 2 of 26th January last, as also to take up other executive matters suggested in this note, much advantage might ensue.

20. *Sections 12, 13, and 14.*—These sections provide for the now well-known process of "going behind the bond." The proportion of suits in which they have been applied is only 25 per cent. of those contested, which appears small. The reduction of claims is, by a test of 193 suits, estimated at an average of 26½ per cent., and Dr. Pollen remarks, "There has been no violent or radical change. Debtors are not unfrequently disappointed with the small results in their favour, and creditors on the whole are fairly satisfied." This is well, so far.

* Not printed in the Selections.

Probably there is some difficulty in getting the Subordinate Judges out of their old grooves. But if the several inspecting authorities will insist on the thorough application of these sections, and of clause 3 of section 59, a further advance will be secured. Meanwhile, Dr. Pollen says, "the Subordinate Judges all speak in the highest terms of the general operation of the three sections referred to; and I fully share their opinions, regarding, as I do, these sections as being the most important and successful part of the whole Act." They have lately been copied into the Jhansi Encumbered Estates Act.

21. *Sections 16, 17 and 20.*—Suits by agriculturists for an account, and liquidation by instalments of the amount ascertained to be due, are here provided for. The facility was at once taken advantage of by the large class for whom it was principally designed—those whose land had been long mortgaged, and who did not know how they stood with the mortgagee. Above 1,000 suits were filed within a few months afer the passing of the Act, but before they could be to any extent disposed of, the High Court ruled (Civil Reference No. 13 of 1881, of which copy is annexed) that these sections only applied to debts not secured by mortgage. "This decision," says Dr. Pollen, "was the cause of a rude shock and of keen disappointment to the people generally" (paragraphs 8 and 19).

22. It was, however, supposed that the object of liberating the land might still be secured, though at greater cost, by a suit for redemption. To this the people turned, with the aid of a remission of court-fees granted by the Government of India,* and filed 1,218 additional redemption suits (making 1,470 in all) before the end of last year. Out of 113 cases decided, 79 were given in favour of the agriculturist plaintiff. But a new difficulty appeared in the fact that the High Court, in the judgment above quoted, had also held that section 20 did not apply to mortgage suits, and had formally affirmed its previous practice, that, in a redemption suit, the only decree which can be made is "for payment of the whole amount within six months, or, in default, for foreclosure." On this, Dr. Pollen says (paragraph 20) :—

* Bombay Government letter No. 4237 of 4th July 1881.
Notification, Financial Department, No. 2092 of 29th July 1881.

"It often happens that the plaintiff is utterly unable to pay or raise the amount due within the specified period, and the result, therefore, of the decree in the redemption suit is to deprive him for ever of his dearly-prized ancestral land, which he would otherwise have been free to redeem at any time within the unexpired period of the 60 years allowed by the limitation law, and which the recurrence of perhaps one exceptionally favourable harvest, combined with high prices, might some day or other enable him to recover. His last state is thus worse than his first. The ryots have in fact taken a fresh alarm. It is impossible for them to foresee with any approach to accuracy the probable result of the difficult and complicated process of taking accounts so that they are left in doubt as to the amount they may be called upon to pay. They cannot tell whether redemption will be within their pecuniary reach or not; whether they will get back their land unencumbered without payment, or whether their rights to redeem will become foreclosed."

Dr. Pollen presses for early relief by legislation, adding that the number of redemption suits still pending is very large.

23. It was undoubtedly intended that the power of an agriculturist to sue for an account and of the Court to provide for payment by instalments, should apply to mortgage suits, as well as money suits. In fact, the suit for an account was originally devised chiefly in order to enable agriculturists, whose lands had passed from them by usufructuary mortgage, to learn how their account stood and recover their land, by paying instalments if necessary. A study of the long correspondence, and the series of drafts of the Bill, will show this conclusively, and the object was so reasonable that it met with no objection from any quarter. I am not, however, prepared to say that the High Court, on a rigid construction of the bare words before them, were not justified in their decision, although the Special Judge and Legal Remembrancer had held otherwise. I fear that in course of the re-draftings which sections 3 and 12 of the Bill as introduced underwent, their effect on sections 16, 17, and 20 in the case of mortgaged property was overlooked. But now that the difficulty, with its disastrous effects, has been brought to light, there need be no hesitation in promptly removing it by legislation. Such explanations should be added to sections 16 and 20, or such verbal alterations made in them, as the Legislative Department may deem best in order to make the former applicable to suits under clause (*z*), and the latter to suits under clauses (*y*) and (*z*) of section 3. I gather that the High Court would have no objection at all to the former change. As to the latter, they have offered no distinct opinion; but it may be observed, with reference to their remarks on section 20 (1), that their concluding paragraph contains an instance in which the Legislature *has* authorised "a Court to convert a decree made according to law into a decree which, if it had been made in the first instance,

would have been contrary to law;" and (2) that a number of distinct "fields" according to the Bombay survey system, and in a ryotwar country, would probably fetch more if sold separately and gradually than if sold in one lot. I may also point out that the Famine Commission have gone much further, and advocate the principle of payment by instalments and continued possession by the mortgagor, even in the case of land specifically pledged, and ordered by the Court to be sold.

Commission's Report, Part II, Chapter III, section III, paragraph 19.
Home Department No. 1082 of 19th August 1881.
Bombay reply No. 6219 of 21st September 1881, paragraph 5.

24. *Sections 21 and 22.*—A serious difficulty has arisen through the High Court having decided (in Application No. 32 of 1810, Exhibit J, of which a copy is appended) that these sections are purely prospective. But they undoubtedly were intended to be retroactive, and I distinctly remember that the reason why they do not specifically distinguish decrees passed before and after the date of the Act coming into force was that, in the opinion of the Legislative Department, an absolute provision of law must be of general application. That retroactivity was intended will be clear on reference to the correspondence with the Government of India regarding the exemption of immoveable property from attachment and sale unless specifically pledged, and from the analogy of the debate on 24th October 1879 on my amendment of section 39. It is evident that, unless existing decrees were to be affected, the measure would not go far for the relief of agriculturists. But the retroactivity intended was unobjectionable, because a compensation was meant to be offered for it in the management of the property by the Collector. That such management can be made effective, under the Bombay system of territorial subdivisions and personal supervision by the Assistants and Deputies in charge of them, I have no doubt whatever. It must, however, be admitted that the intention has failed through the unfortunate use in clause 2 of section 22 of the words "at any subsequent time," which perhaps justifies the interpretation which the High Court have thought fit to adopt. If some such words as "in any proceedings consequent on a decree passed before or after this Act comes into force" had been used, the whole question might never have been raised. But as it has been raised, their substitution might not now suffice to settle it: specific words in both sections would perhaps be necessary. This, however, is a detail for the Legislative Department to decide. What I would urge is that no time should be lost in correcting an error through which debtors are still liable to arrest and imprisonment, and land not specifically pledged may be sold under old decrees. Since the passing of the Act, eighty persons have been arrested, and a small proportion of them actually imprisoned. This of course represents a much larger number of warrants used as means of extortion only, as shewn in my introductory speech of July 17th, 1879.

25. If the above suggestion be adopted, it might be as well to take the opportunity also to amend clause 2 of section 22 in respect of the points mentioned in paragraph 86 (second portion) and paragraph 87 of Dr. Pollen's No. 386 of 7th June 1880. The difficulties felt probably arise chiefly from the peculiar and highly technical drafting. The words "in the opinion of the Collector" clearly empower him to decide as to the extent and quantity of the portion required for the support of the debtor and his family. I conclude it was assumed that the Court would refuse to issue process against property so reserved, and that the authoritative management and reservation would be held to cover the right of appropriation of the proceeds, though moveable, to the objects in view. The section, though drafted and re-drafted, might still, perhaps, be improved.

Relief of insolvents, etc.

26. The direct provisions of the law for the absolute relief of insolvents are—

(*a*) *Section 18, clause 1.*—Discharge from whatever portion of total debts not exceeding R50 the Court considers a judgment-debtor, on a decree for less than that sum, to be unable to pay.

(*b*) *Section 18, clause 2.*—Order by the Court of insolvency proceedings where the decree, or the decree together with other debts, amounts to R50 or upwards.

(*c*) *Chapter IV.*—Insolvency proceedings on application of either debtor or creditor.

Closely allied to them is—

(*d*) Management by the Collector for seven years of the land of ordinary judgment-debtors (section 22, clause 2) and insolvents (sections 29 to 32).

The whole of these provisions have, practically, remained a dead letter up to the present time.

27. Regarding the scope and importance of these measures, I may quote, for convenience sake, certain portions of my speeches of July 17th and October 24th, 1879. After explaining the execution of a decree by sale of moveables, the history of the sale of land question, and the grounds for exempting land from attachment and sale unless it has been specifically pledged, I observed :—

The second measure, also contained in Section 23,* is the grant of power to the Court when passing a decree, or subsequently, to direct the Collector to pay off the amount by managing for not more than seven years any land not specifically pledged, after deducting a modicum sufficient for the support of the debtor and those of his family dependent on him. This course, which is only a new application of the principle of temporary alienation, will add greatly to the creditor's security, while diminishing the worry and expense to both himself and the debtor. * * * * * While thus contemplating the continued recovery of debts from moveables and land, however, policy no less than justice demands that the last refuge of an effective insolvency law should be provided for the debtor. Such a law is really at the bottom of the whole matter. Compared with what we mean to compel a man to *pay*, the question of what we shall hold him to owe sinks into insignificance. * * * Whether a man *is* insolvent or not is a mere question of fact, quite unconnected with the enquiry how he came to be so. How much he *can* repay, without being made a useless or dangerous member of society, is a mere matter of calculation. * * * To declare an agriculturist insolvent where he is so; to set a reasonable time before him during which he shall work himself free, and to reserve the means therefor; and eventually to start him afresh with the lesson of experience, seem more sensible than to lock him up for a time, while his family are starving, and then turn him adrift a beggar. To the creditor certainly the former course will be the more profitable, as also to society.

* Now 22 of the Act.

In accordance with these principles, the Bill, in the first place, provides (section 20)† for the numberles petty cases in which the means of the debtor, the claims against him, and his partial or total inability to satisfy them, come before the Court in course of the suit or application for execution. Where this is so, it is far shorter, simpler, and less troublesome to all parties to empower the Court at once to settle the matter than to let it go on through the perfectly useless, but costly and vexatious, forms of taking out execution and applying for declaration of insolvency. Where the case is quite simple, the Court will therefore release the debtor from any balance which it is satisfied he cannot pay. When there are several creditors or other complications, or the amount exceeds R50, it may at once direct the taking of insolvency proceedings. Again where such proceedings are instituted, either so or on the application of either debtor or creditor, ascertained insolvency will be at once admitted, and the Court will proceed to turn the available assets to the best advantage. * * * As to immoveable property, any portion specifically pledged for a scheduled debt may be let rent-free for a premium for a term not exceeding twenty years, instead of being sold, if the debt can thereby be cleared off. Portions unpledged may be handed over for a term not exceeding seven years to the Collector. * * * In practice the lessee will probably sometimes be a creditor, but more often the insolvent himself under due security. If the debt cannot be fully paid off by these measures, the insolvent will be discharged from the balance. * * * * If a man's debts are so heavy that he cannot clear them off in this time, it is better that he should get a discharge for the balance than that he should drag on as a slave, without hope of freedom or stimulus to exertion.

† Now 19 of the Act.

* * * * * * * * * *

The relations of debtor and creditor are adjusted on fundamental principles, equitable between the two and essential to the cohesion of society. A man should pay what he really owes, and no more, but his creditor should not be allowed to use the State for the purpose of enslaving him. On the other hand, we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we give the creditor full and effective aid in obtaining all that is fairly due and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, the destruction of the raiyat's credit or his bondage to secret and extortionate agreements must ensue, and all our well-intentioned interference will do more harm than good. With such provision, the measure will not injure the raiyat's legitimate credit, but improve it.

* * * * * * * * * *

I look upon this provision* as the keystone or test point of the Bill. If it works well, the raiyat's credits will be secured on a satisfactory basis; if otherwise, his borrowing, even for for reasonable purposes within the limits of his true means, will become most difficult, while the alternatives of absolute non-transferability of land, or eviction and a poor law, will stare us in the face.

* The management of land by the Collector.

28. In short, what the Act contemplates is a compensatory system. If the creditor was, on the one hand, to have his bonds questioned, his accounts discredited, and his power of imprisonment taken away, he was, on the other, to receive the benefit for seven years of all that could be got out of the land by efficient Collector's management, the debtor being declared an insolvent, if necessary. The Court was to act of its own motion whenever advisable, and the debtor might be declared an insolvent even without his consent, because it was politically desirable to put him on his legs again in the world as soon as possible.

29. What are the causes of those provisions not having "worked at all—well or ill?" Primarily, appears the fact that, whereas the Legislature intended that the Judge, having

gone fully into the history and merits of a case, and thus learned the debtor's circumstances, should take an intelligent initiative so as to make the decree as far as possible a *finis litis* one way or another, the Subordinate Judges have not shaken themselves clear of the old judicial idea that their function is "to turn an easy wheel" when some one else "moves" them to do so. Section 19 is, in both its clauses, worded expressly to empower the Court "to direct" or take all necessary action of its own motion, as the Bombay Government (paragraph 11 of Resolution) correctly observe. The Courts having assumed this attitude, the secondary causes of the law remaining a dead letter are not far to seek. Creditors do not "move the Court," because, as long as a debtor has got anything to lose, they find it more profitable to squeeze him in other ways, of which Dr. Pollen's report affords several indications. Debtors do not "move the Court," partly because "the debtor has to be active in the matter. * * Notices must be served on creditors; process-fees must be paid; the debtor must attend" (paragraph 24), but chiefly because they know nothing about the advantages within their reach. How can a man who is insolvent, *ex-hypothesi*, pay process-fees, employ pleaders, and the rest of it? The absence of rules made by Government under section 29 may have had something to do with the non-application of section 22; but if the Courts had vigorously used their powers to require management by the Collector, the rules would soon have been forced into existence. They should now be issued as soon as possible. Various old stock excuses or the inoperativeness of the sections are assigned by some Sub-Judges, but Dr. Pollen (paragraph 26) rightly sweeps them aside:—

I think ignorance of the true intention and of the real effects of the insolvency provisions is the main cause of the backwardness of the people. The Subordinate Judges for the most part assign religious scruples and the fear of losing their credit as being the two chief causes, but it seems to me that if the process were once familiarised to them by a few successful examples, there would be no hesitation on mere religious grounds in freely resorting to it.

30. As to the remedy necessary, Dr. Pollen says (paragraph 25) that "the Courts must be empowered to take all the necessary steps of their own motion, and to enforce the attendance of both creditors and debtors, and the payment of process-fees must be dispensed with." In this I concur, with one modification—the Court *is* empowered already, but its powers must be expressed more fully, and the duty of using them must be explicitly laid upon it, as in section 7 in the case of examining defendants, "unless, for reasons to be recorded by it in writing, it deems it unnecessary to do so." The Court will, of course, not use the power in cases where it finds that the debts, though considerable, are in a reasonable course of liquidation. The actual expense of serving processes might be charged to the estate; but here, as elsewhere, formalities should be minimised. I would very earnestly recommend early legislation for the above purposes by a brief clause applying to sections 19, 22, 29 and 30, or in such other form as the Legislative Department may decide to be preferable. Unless this be done, the Act, though effecting various improvements of relatively minor importance, must fail of its main object—the liberation of the peasant proprietary from the burden of debts which they can never pay, and the preservation to them of their ancestral lands.

Conciliation.

31. This institution has undergone enormous strain, because, first, it was new to everyone; and, secondly, the applicability of the Act to old decrees threw on it a quantity of work quite abnormal, which must gradually slacken off. In the first year, out of 29,000 cases actually disposed of by about 346 Conciliators, 24 per cent. led to amicable settlements recorded and sent to Court, 11 per cent. to withdrawal or private adjustment, and 21 per cent. to direct refusal of the parties to come to terms. In the remaining 44 per cent. no settlement was arrived at, owing to the default of plaintiff (11 per cent.), or the refusal or neglect of the opposite party to attend. In 1881 no less than 69,531 cases were disposed of, though the Conciliators had been reduced to 313. Of these, settlements sent to Court amount to only 12 per cent., withdrawals or private adjustments 8 per cent., refusals to come to terms 16 per cent. The remaining 63 per cent. consist of plaintiffs' defaults (26 per cent.) and neglects or refusals to attend. It is some satisfaction to know that 10,195 disputes in the first year and 14,146 in the second, were settled without resort to the Courts. But it is noteworthy that, in the second year, the proportion of cases in which conciliation, whether successful or not, had fair play, or rather scope for acting at all, is swamped by the non-attendances. The distinction between columns 6 and 9 of the table in Dr. Pollen's 34th paragraph is not very intelligible, but the extraordinary growth of defaults of plaintiffs seems to indicate that creditors may be using mere applications to a Conciliator as a means of extortion, in addition to certificates, as Dr. Pollen suggests (paragaph 39).

32. The results of conciliation where it has really come into play are highly satisfactory. In the first year the refusals to come to terms were only 39 per cent., and in the second 44 per cent, of the total of compromises, agreements and non-agreements (columns 5, 7, 8, and 10). Dr. Pollen, who has from the first been unfavourable to the system, thus reports on it—

Speaking generally, I may say that most of the agreements which I have seen, and I have seen nearly all, are in outward appearance fairly reasonable and equitable. In the case of claims on money bonds and decrees, remissions—sometimes nominal, sometimes substantial— are allowed, and it is usual to allow payment of the balance by instalments extending over longer or shorter periods. Mr. Ranade considers that the abatements agreed to before Conciliators* compare very favourably with the reductions made by the Courts after full enquiry and after putting into operation the machinery provided by sections 12—14 of the Act, * * * ; and he further says that the conciliation-work, as tested by the nature of the agreements entered into by the parties, shows evident signs of care and deliberation * * In some talukas a fair number of mortgage transactions have been settled by the Conciliators, the compromises being generally proper and equitable. * * * * * On the whole, I think I may safely say that the agreements are good. Certain it is that comparatively speaking, very few complaints have been made against them, either to me or to the Subordinate Judges. * * * * * When the Conciliators are themselves good, the conciliation system may fairly claim to have done much good. Mr. Ranade† has a very high opinion of the usefulness of the system: he thinks that its general working has been satisfactory, and that 'there is every reason for the continuance of the experiment.' * * * Mr. Bhide † writes as follows: 'Taking all thing into consideration, conciliation has done, I think, a great deal of good, and, if carefully worked, is likely to prove a very useful institution. The only drawback is the paucity of really good and willing Conciliators.' * * * The Subordinate Judges, with a few exceptions, speak well of the Conciliators and of the system generally. * * * Its advantages are not a few. It tends to save the parties a vast amount of time, trouble and expense. It tends also to allay the irritation between parties which resort to the Courts might occasion or increase. It intercepts in the initial stage an immense body of litigation, and thus allows to the Courts more leisure to investigate the contested and more difficult cases that come before them. * * * Some Conciliators have asked me to obtain for them vacant kulkarni watans as a reward for their services, others ask for appointments for their sons and relatives. * * The majority, however, of the Conciliators seem to me to be thoroughly disinterested.

* Calculated as 26 and 29 per cent. in Poona and Satara respectively.

While thus quoting Dr. Pollen against himself, it is only fair to invite perusal of his 43rd and 44th paragraphs, in which he objects to the system that there in it no guarantee against claims purposely enhanced in order to make the remissions imposing, against collusive agreements, or for "that thorough investigation into the true merits of each transaction which would be secured by the application of the law in the Civil Courts."

33. In accordance with Dr. Pollen's views, he recommends the reduction, not the increase, of Conciliators, and has suggested at various times numerous provisions or regulations tending to bring the Conciliators more directly under the yoke of the Sub-Judges and their superiors. Space forbids my entering into these in detail, but I am quite unable to accept Dr. Pollen's views and proposals on this subject generally. Many of them have been ably controverted by Mr. Naylor, the Legal Remembrancer, who has thoroughly grasped the conciliation theory. They are entirely at variance with the principle of conciliation as practised in France recommended by the Secretary of State, and adopted by the Indian Legislature. Their adoption would convert Conciliators into Courts, subject to the Subordinate Judges, and baffled at every turn by technicalities which they are not *by the hypothesis* capable of understanding. Conciliation is nothing if it is not an informal, rough-and-ready, amicable settlement made between, and with the mediation of, persons all unskilled in the law. Doubtless such settlements may occasionally include time-barred debts, or be otherwise shocking to the legal mind, and possibly the debtor might, sometimes, have got better terms out of a Civil Court; but then he might not and he would certainly have lost time and money.

34. The proper course appears to me to be, in the first place, to amend the law in two particulars, which I will mention, and in the second, to extend the system by appointing more Conciliators, and encouraging those who do their duty. I need scarcely add that men found to be incompetent or untrustworthy should be removed without hesitation.

35. In the law, the great blot is the absence of power in the Conciliator to compel the attendance of the parties. This power is possessed by the *juges de paix* in France. I provided it in the first draft of the Bills (sections 51 and 52), laid unofficially before the Bombay Government, in accordance with my instructions from the Home Department, No. 223 of February 26th, 1879; but Sir Richard Temple objected to it (Minute of 14th April 1879), and it was struck out. Experience has now shown that no harm has resulted from conferring the power of issuing process to compel attendance on Village Munsifs, who are not a higher class of officers, but the reverse, and that the Conciliators are generally competent,

† † These gentlemen are the two Assistants to the Special Judge appointed under section 52 of the Act. They stand at the head of the 1st Class Subordinate Judges, and are well known as, perhaps, the most able native judicial officers in the Presidency.

upright, and trustworthy. It is only fair and equitable that a man who brings a complaint before a Conciliator should himself be obliged to carry it through, and should be aided by the appearance of the opposite party. Moreover, the advantage of compelling the attendance of defendants and examining them in regular suits is now established. Only by this means can the evil of the large and growing proportion of non-attendances, already referred to, be put down.

The second amendment which seems desirable is to fix a limit after which a certificate granted under section 46 should be invalid. Six months, or at most twelve, would be appropriate. As to the expediency of the change in delivery of notices advocated in Dr. Pollen's 44th paragraph I have doubts, and would, at any rate, leave it to be tried under a rule, which could at any time be cancelled.

36. As to the extension of the system, all the Sub-Judges, instead of only 15, might be appointed to the office in accordance with the evident wish of the Secretary of State (Despatch No. 2 of January 26th, 1882, to the Bombay Government). Moreover, I cannot but believe that a larger number of persons fit to be Conciliators could be found if the aid were enlisted (1) of the District Officers, their Assistants and Deputies, the absence of all allusion to whom throughout Dr. Pollen's reports and letters is remarkable; and (2) of the Sarvajanik Sabhas at Poona and the other large towns, who welcomed the conciliation system at the outset, and whose interest it is to promote local self-government in all its forms. Finally, I would recommend that the Government of India should now confer the title of "*Rao Saheb*" (which is next below that of "*Rao Bahadur*" lately given to all members of Municipal and Local Boards) on the one non-official Conciliator in each of the four districts who may be selected by the Local Government as most deserving. The promise of a similar boon in future years and of the further dignity of "*Rao Bahadur*" after a certain number of years of approved service by the "*Rao Sahebs*" would stimulate the action of all Conciliators.

37. With these improvements in the law, and this extension of basis and encouragement to efficiency, the conciliation system should be left to work itself fairly on its own fundamental principles. The Special Judge should use his revising powers, and the Government should make an example of every unworthy Conciliator. Beyond this, the system will be judged by the countryside. If parties find they do not get justice out of it, the refusal to come to terms will increase, and it will eventually have to be abolished. But the statistics already reviewed show no indication of any such extinction.

Checks on Fraud.

38. *Registration.*—This branch of the subject made a bad start, from which I fear it has never recovered. The Act contemplated that registration under section 71 should commence on November 1st, 1879, by the machinery of the ordinary taluka sub-registrars; but it appears (Dr. Pollen's No. 386, paragraph 101) that "for a considerable time at first, after the passing of the Act, the sub-registrars refused to register them, not understanding the law, and alleging that they had received no rules, orders or instructions on the subject"; and when the appointment of village registrars, five months later, gave those officers (under clause 2 of section 71) jurisdiction in the matter, it was only a jurisdiction concurrent with that of the taluka sub-registrars, who, if they had been set at work from the first, would probably have already (in their own interest) got through a great mass of the work, and have continued to attract a large share of it. The hitch as to the insufficiency of Rules 18, 19, and 20, which was started two months later, was purely technical, and might have been got over by a little skilful amendment of the rules. Or, at the worst, the prompt and simple repeal of clause 2 of section 71 would have left the taluka sub-registrars to complete the work they had begun. But as time ran on, these remedies became no longer sufficient or appropriate, and in October 1881, the repeal of the whole section 71, which Act XXIII effected, was the only course open, though I think it would have been well to have accompanied it by provisions to secure as evidence of greater or less value such instruments as had already come into our hands.

39. As to the actual working of the village registration proper, no statistics or other facts are given in either of Dr. Pollen's annual reports, and the Registration Department do not seem to have supplied them. I gather, however, that the Registration Department have at length succeeded in their original wish to withdraw village registration from the village hereditary officers and the control of the Collector and his subordinates, and to place it under a limited number of stipendiaries of their own, placed over registration circles comprising a

number of villages. Of the grounds for this change of agency from that fixed by the Bombay Government letter No. 4495 of August 27th, 1879, paragraph 20, and consequently announced to the Legislative Council, I have no information. But I cannot but fear that it will give rise to various evils suggested at that time by Mr. Justice West and others, besides those caused by the appiontment of unsuitable persons, which Dr. Pollen apprehends (paragraph 49).

40. *Receipts, Pass-books and Statements of account.*—It is discouraging to hear that the important Chapter IX, originated by the Deccan Riots Commission, is a dead letter. But as the causes of it are that "the people are mostly ignorant of the important provisions made therein for their advantage" (paragraph 51), and that no notice is taken of breaches of the law, the remedy is simple. But not only should "the Assistant Collectors and Mamlatdars bestir themselves energetically," but also the Special Judge, his assistants, and the Sub-Judges. All may use their opportunities of instructing the people, but the judicial officers might aid especially by sending to the Magistrates every instance coming before them in which the law had been contravened.

Conclusion.

41. The introduction of a measure so entirely new in principle, as well as detail, has necessarily met with extraordinary difficulties. The interests of money-lenders and pleaders, the prejudices of some judicial officers, the intricacies of legal interpretation, the stupidity or corruption of some of the inferior agents, the ignorance of the people of both the law and their own best interests, and the clamour of adverse *doctrinaires*, eager to draw conclusions before facts were available—all were against it. But I submit that the measure has now been proved by experience to have been completely successful in every instance in which its undoubted intentions have had fair and full scope. In order to succeed in all respects, it needs no modification of principle, no change of method, nothing except the aid of a few legislative amendments to make its original meaning more clear, of vigorous executive action to carry out its provisions fully, and a little patience.

42. It may be convenient that I should summarise the suggestions which this note contains:—

Legislative amendments—

(*a*) Sections 3 or 50. Mortgage suits (4 and 2) to be placed under the superintendence and revision of the Special Judge. (See my paragraph 11.)

(*b*) Sections 16 and 20. The former to be made applicable to suits under clause (*z*) and the latter to suits under clauses (*y*) and (*z*) of section 3. (See my paragraph 23.)

(*c*) Sections 21 and 22. Both these sections to be made retroactive. (See my paragraph 24.)

(*d*) Section 22, clause 2. To be improved in drafting. (See my paragraph 25.)

(*e*) Section 19 or elsewhere. A clause or clauses to be added, so as to make it clear that the Court is to act under sections 19, 22, clause 2, 29 and 30 of its own motion, and to give it any specific powers necessary for the purpose. (See my paragraph 30.)

(*f*) Section 40. Power to be given to the Conciliator to obtain the attendance of the opposite party. (See my paragraph 35.)

(*g*) Section 46. A clause to be added rendering certificates invalid after a fixed period. (See my paragraph 35.)

Executive measures—

(*h*) The number of Sub-Judges to be restored to the full 36, and extra men to be allowed when the work is too much for one. (See my paragraph 4.)

(*i*) The circuit system to be limited to special localities, to be now fixed. (See my paragraph 5.)

(*j*) Sub-Judges and Conciliators to promote trial locally by consent in suits for between R100 and R500. (See my paragraph 6.)

(*k*) The Village Munsif system to be extended, special measures being taken to secure fit men. (See my paragraph 9.)

(*l*) The Special Judge and Government to take various steps to put down technicality. (See my paragraph 12.)

(*m*) Government Pleaders to be appointed for each taluka. (See my paragraph 16.

(*n*) Complete statistics to be obtained and scrutinised. A special officer to be appointed for six months for this and other important purposes. (See my paragraph 19.)

(*o*) Rules for the management of land by the Collector to be made under section 29. (See my paragraph 23.)

(*p*) The conciliation system to be extended, by appointing all Sub-Judges and taking special steps to obtain other fit men. (See my paragraph 36.)

(*q*) Honorary designations to be conferred on deserving Conciliators. (See my paragraph 36.)

(*r*) Judicial and Revenue officers to make known Chapter IX, relating to statements of account, etc., and the former to bring to Magistrate's notice infringements of the law. (See my paragraph 40.)

The special officer, whose appointment is suggested in paragraph 19, would be very useful in connection with clauses (*k*), (*n*), (*o*) and (*p*), but especially (*o*), and might also be directed to collect, and arrange for the future accumulation of facts relating to the various points touched upon in the Secretary of State's Despatch to the Bombay Government, No. 2* of 26th January 1882, so that when the Act has been amended as now suggested, and a sufficient time to observe its true working has elapsed, a complete and reliable reply may be given to that communication.

43. In concluding this paper, in the course of which I have had occasion to dissent from Dr. Pollen's views on more than one point, I cannot refrain from paying the tribute justly due to the great care and ability, and the honest desire to give the Act a fair trial, exhibited on his part in the mass of correspondence which has come before me. Under the clearer light which the proposed amendment of the Act will afford, and with a somewhat increased disposition to put down technicalities and solve doubts by means of his great powers as Special Judge, which I trust that amendment will promote, I could desire no better agent to carry into effect a measure which, though not in several provisions such as I would have had it, is still one in, and for the success of which I am personally interested and responsible.

SIMLA;
The 15th July 1882.

T. C. HOPE.

APPENDIX A.

Judgment in Civil Reference No. 13 of 1881.

Shankara Dargo Patel . . . . *Appellant,*

versus

Danapa valad Virantapa . . . . *Respondent.*

We think that the Senior Assistant Judge is right in holding that the term "decree passed against an agriculturist" in section 20 of Act XVII of 1879 means a decree passed against an agriculturist *personally*, and does not include a decree for the recovery of money by the sale of mortgaged property.

The Allahabad Court has held (*a*) (and we think rightly) that section 210 of the Code of Civil Procedure (which by section 74 of Act XVII of 1879 governs proceedings under that Act) does not empower a Court to make payable by instalments a decree for the recovery of money by sale of mortgaged property. Nor is there anything in Act XVII of 1879 which enables a Court, at the time of passing such a decree, to order it to be payable by instalments. Sections 16 and 17 seem to indicate a contrary intention. They provide that in certain cases suits may be brought by an agriculturist for an account; and that the amount ascertained may be decreed to be due, and be made payable by instalments. But comparing the words of section 16 with the words of section 3, clause (*w*), it is clear that the debts in respect of which an account may be sued for are debts ***not secured by mortgage***, and that it is only in respect of such debts that section 17 authorises an order for payment by instalments. In the case of a debt secured by a mortgage, the agriculturist's remedy lies not in a suit for an

(*a*) I. L. R., 2 All., 320.

*Printed at page 361 of this Selection.

account, but in a suit for redemption (section 3, clause (z); and there being no special provision in the Act authorizing instalments, the only decree which can be made in such a suit is the ordinary decree for payment of the whole amount within six months, or in default, for foreclosure. If it had been intended to give to an agriculturist mortgagor the benefit of instalments, it may reasonably be supposed that sections 16 and 17 would have been made applicable to suits under clause (z), as well as under clause (w) of section 3, but, as we have said, the wording of Section 16 shows that this is not so.

There being, therefore, no special provision in the Act authorising a decree in a mortgage suit to be made payable by instalments, we must fall back on the provisions of section 210 of Act X of 1877, and these do not authorise such a decree. It seems to us to follow that section 20 of the Act cannot be made applicable to decrees in mortgage suits. It is impossible to suppose that the Legislature would authorise a Court to convert a decree made according to law into a decree which, if it had been made in the first instance, would have been contrary to law. And, speaking generally, we may say that it is very improbable that the Legislature would authorise the Courts to compel the sale of immoveable property in small lots, and at different times—a procedure which would be likely greatly to reduce the selling price, and be certain to multiply the law costs.

The effect of section 20 of Act XVII of 1879 must be taken to be an enlargement of the indulgence granted by section 210 of Act X of 1877, but only in those cases to which the latter section applies. By section 210 of the Code, the Court may, after the passing of a decree in money suits, order that the amount be paid by instalments, provided that the decree-holder consent. By section 20 of Act XVII of 1879, the Court may in the same suits make the same order, without the consent of the decree-holder.

M. R. WESTROPP.

The 25th March 1881. M. MELVILL.

APPENDIX B.

Judgment in Application No. 32 of 1880 under extraordinary jurisdiction. No. 144.

Dipchand Gotamshet Gujar, Proprietor and Manager of the Firm of Tribhuvan Kisanji, ... } *Applicant,*

versus

Tarachand Dalichand, deceased, by his heirs and sons, Gokaldas and others, *Opponents.*

APPLICATION AGAINST THE ORDER OF RAO SAHEB DWARKANATH NARAYEN RANDIVE, SUBORDINATE JUDGE OF PATAS, IN DARKHAST No. 940 OF 1879.

The provisions of Chapter II of the Deccan Agriculturists' Relief Act (XVII of 1879) are by Section 3 of that Act expressly rendered applicable to suits instituted on or after the 1st November 1879 only, the day on which the Act came into force (Section 1). The provisions of Chapter III, from its commencement (Section 11) down to and inclusive of Section 18, also seem to be purely prospective, and so it has been expressly decided as to Sections 12 and 13 by a Divisional Bench of this Court on the 23rd March last, upon a reference from the Subordinate Judge of Rahuri in the case of *Suryaji* versus *Tukaram* (a). The 19th and 20th sections (in the same chapter) are, however, rendered expressly applicable to decrees passed before as well as to those passed after the coming into force of the Act. There is not any such specification in Sections 21 and 22 of decrees passed before the coming into force of the Act. This imperfect circumstance, coupled with the special provision contained in the second clause of Section 22, which appears to us to be inapplicable to any case in which the decree had been made before the Act came into force, has led us to the conclusion that neither Section 21 nor Section 22 was intended by the Legislature to apply to decrees made previously to the coming into force of the Act. Section 21 enacts that "no agriculturists shall be arrested or imprisoned in execution of a decree for money." Section 22, Clause 1, enacts that "no agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists." As a substitute or compensation for the right of arrest and imprisonment and the right to attach immoveable property whereof the money decree-holder was thus deprived, the Legislature proceeds by the second clause of Section 22 to provide as follows:—"But the Court may, *when passing a decree against an agriculturist or at any subsequent time,* direct the Collector to take possession for any period

(a) Printed Judgments of 1880, page 80.

not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property, and deal with the same for the benefit of the decree-holder in manner provided by Section 29." The words "when passing a decree against an agriculturist" cannot be applied to any decrees made before the coming into force of the Act, and the words "or at any subsequent time" can only be appliedto a time subsequent to a decree passed under the Act. The result of this is that no compensation is provided for any decree-holder who was such before the coming into force of the Act. Although if Section 21 and the 1st Clause of Section 22 were applied to such a decree-holder, he would be thereby deprived of the right to enforce his decree either by arrest or imprisonment of his debtor, or by attachment or sale of his immoveable property, he having already by the Civil Procedure Code (Act X of 1877), Section 266, Clauses (*b*) and (*c*), been debarred from resorting for satisfaction to the implements of husbandry and cattle or the materials of the houses and other buildings belonging to his agriculturist debtor, which implements of husbandry and cattle in nine hundred and ninety-nine cases out of a thousand, constitute his moveable property. We cannot think that the Legislature meant quite to say that the decree-holder, who became such before Act XVII of 1879 came into force, should not be entitled to enforce his decree by any means whatever as would virtually be the result of holding that Section 21 and the 1st Clause of Section 22 applied to such decrees. The 2nd Clause of Section 22 and the omission to specify in Sections 21 and 22 decrees made before the Act came into force (which decrees had been carefully named in Sections 19 and 20), together with the improbability that the Legislature forgot the case of *Ratansi Kalianji* (*b*) recently decided by a Full Bench of this Court, and which strongly illustrates the necessity of using distinct language when the Legislature has resolved on depriving judgment-creditors of their existing rights by retrospective legislation, fortify the conclusion which we have drawn from the 2nd Clause of Section 22.

M. R. WESTROPP.
M. MELVILL.
The 26th April 1880. F. D. MELVILL.

Office Memorandum from A. MACKENZIE, Esq., Secretary to the Government of India, Home Department, to the Legislative Department,— No. 1260, dated Simla, the 28th August 1882. No. 18.

The undersigned is directed to forward to the Legislative Department a copy of a letter from the Government of Bombay, No. 5149, dated the 19th instant, and of its enclosures, on the subject of certain amendments that appear to be necessary in the Deccan Agriculturists' Relief Act, 1879.

2. The amendments recommended are as follows :—

(*a*) Section 3 or 50.—Mortgage suits (*y*) and (*z*) of Section (3) to be placed under the superintendence and revision of the Special Judge.

(*b*) Section 13.—A suitable addition to be made to the section providing that redemption suits should not be dismissed as premature on account of the period stipulated for redemption not having expired, when the debt has been already satisfied out of the mortgaged property.

(*c*) Sections 16 and 20.—The former to be made applicable to suits under clause (*z*) and the latter to suits under clauses (*y*) and (*z*) of Section 3.

(*d*) Sections 21 and 22.—Both these sections to be made retroactive, so as to apply to decrees passed before the Act became law.

(*e*) i.—Section 19.—A clause or clauses to be added so as to make it clear that the Court is to act of its own motion in each case, and when it does so act under Section 19, paragraph 2, is to act under Sections 29 and 30 also of its own motion, and to give the Courts any specific powers necessary for the purpose.

ii.—Section 22, paragraph 2.—To be improved in drafting, a clause being added to make it clear that the Court is intended to act spontaneously and not to await the motion of the judgment-creditor to make over such management to the Collector.

This clause also to be amended to provide for the protection from attachment of crops on the land reserved for the agriculturist's support.

(*f*) Section 40.—Power to be given to the Conciliator to obtain the attendance of the opposite party.

(*b*) Ind. L. R. 2, Bom. 148.

(g) Section 46.—A clause to be added rendering certificates invalid after a fixed period.

(h) Section 50.—To add the words "and Chapter VI" after the words "Chapter IV" in this section, or make such other amendment of the Act as will empower the Special Judge to control the proceedings of Subordinate Judges in the matter of filing or not filing agreements sent to them by Conciliators under Section 44 of the Act.

(i) Section 54.—A clause to be added empowering the Special Judge to make references under Section 617 of the Civil Procedure Code to the High Court.

(j) Section 68.—To repeal the last thirteen words of the section as amended by Act XXIII of 1881.

3. This Department concurs in the amendments suggested above for the reasons given by the Bombay Government and in the Note by the Honourable Mr. Hope, which forms one of the enclosures to the letter from that Government, subject to the following remarks.

As regards amendment (a), this Department is of opinion that "revision" should be substituted for "appeal" also in suits of the description mentioned in Section 3, clause (w), when the defendant or any of the defendants is an agriculturist; or, in other words, that it is desirable to substitute "revision" for "appeal" in all suits to which Sections 12 to 15 of the Act apply. The attention of the Legislative Department is, however, invited in connection with this proposal to Dr. Pollen's letter No. 512 of the 15th August, which forms one of the enclosures of the Bombay Government letter.

As regards amendment (c), it will suffice to provide that a decree for redemption or foreclosure may be so framed, or any such decree already made may be so altered, as to admit of redemption by paying the debt by instalments, and in the event of default in paying such instalments, the rule might be that the property should be sold piecemeal, a discretion being reserved to the Court to sell the property as a whole, the reasons for taking the latter course being recorded in writing. It should also be provided that in a suit for an account, an order may be made allowing redemption by payment of the amount ascertained to be due in one sum or by instalments, so as to avoid the necessity for a second suit for redemption, when the amount due has been ascertained by the suit for an account.

The suggested amendment (h) of Section 50 is left for further consideration in the Legislative Department.

4. The undersigned is to request that the Legislative Department will be good enough to take very early steps to prepare a draft Bill for amending the Deccan Agriculturists Relief Act in the manner stated above.

N.B.—Act XXII of 1882 was thereupon passed on the 22nd December 1882.

From the Honourable C. GONNE, Chief Secretary to the Government of Bombay, to the Secretary to the Government of India,—No. 5473, dated Bombay Castle, the 10th August 1883. No. 146.

With reference to letter from this Office,* No. 4130, dated the 19th June last, I am directed to forward, for the information of the Government of India, copy of the report by Mr. H. Woodward, C.S., on special duty, on the working of the Deccan Agriculturists' Relief Act, and to state that the report is under the consideration of this Government.

* Not printed.

From H. WOODWARD, Esq., on Special Duty, to the Chief Secretary to the Government of Bombay,—No. 30, dated Sholapur, the 25th June 1883. No. 147.

Preliminary.

I have the honour to submit a report on the working of the Deccan Agriculturists' Relief Act. I was appointed on the 12th December 1882, generally to enquire into the operation of the Act while my attention was specially directed to the extension of the Village Munsif system and to the framing of rules for the management of debtors' estates by the Collector under Section 22. I was also instructed to arrange for the future accumulation of facts bearing upon the working of the Act. After reporting myself to the Secretary to Government, I remained in Bombay to study my subject by permission of His Excellency the Governor until after the Christmas holidays. On the 3rd of January I began my tour, starting from Poona and traversing the four districts affected by the Act. I lost no opportunity of consulting representatives of all classes, European and Native, official and non-official. As far

as practicable, I have endeavoured to verify statements and opinions by facts and figures. Often this is a most difficult matter. Deductions based even on correct figures are not always sound, and where the figures are unreliable they must be doubly misleading. I have therefore refrained from troubling Collectors for statistical details, which, they frankly admit, are untrustworthy, and have striven to be guided to conclusions only by unimpeachable figures and by the results of personal research. If I rightly understand the wishes of Government, my inquiry was to be from an independent, outside, and non-judicial point of view; nor were my duties to include the collection of a mass of doubtful returns that had already been furnished to Government in profusion. In avoiding to attempt too much, I fear I may have fallen into the opposite error of doing too little. Opinions supported by overwhelming testimony, though often by their nature incapable of precise verification, I have regarded as facts; and any conclusions I may have arrived at are based on such facts or on figures presumably reliable. Before my appointment I had served in none of the districts where the Act is in force nor was I at all acquainted with its provisions. I therefore came to the enquiry wholly free from bias or predilections of any kind. Of the four districts, Sholapur is materially the worst off, Nagar, Poona, and Satara following in order of superiority.

The Raiyats.

Their condition.

2. It will be unnecessary for me to add yet another description of the Deccan rayat to the many already on the records of Government. The subject has again and again been investigated with equal ability and laboriousness. For the purposes of this report, however, it will be convenient to make some rough classification of the agricultural population of the Deccan. Excluding then, those whose chief source of wealth is other than agriculture and mere day-labourers, the rayats may be apportioned into three groups, which I shall denominate higher, middle, and lower. The two classes excluded are unaffected directly by the operation of the Act. The higher class embraces cultivators of a large area of mostly superior soil with adequate stock and implements. Some of the land is usually irrigated, and the owners have a small capital in reserve either inherited or the result of saving. The members of this class are often out of debt; have never incurred debt. Though indebted, they are well able to meet their obligation and may be considered solvent and independent. A succession of bad seasons may greatly reduce their capital, but will not utterly ruin them. These constitute not more than ten per cent. of the cultivating class. The middle class comprises cultivators of from fifty to a hundred acres of medium land who own from two to four pairs of bullocks. The best land of their holdings is usually sold or mortgaged. They and their families devote the whole of their time and energies to agriculture and only in a succession of bad seasons resort to other kinds of employment. They can tide over one, and sometimes even two, bad years without being pauperised, unless assisted any further strain compels them to part with their cattle and household goods, and gradually sink to the status of labourers. They cultivate intelligently and industriously, contriving to extract from the soil as much as circumstances will permit. By sowing a variety of crops they manage, as a rule, to set off the gains of some against the losses of others, and it is only in seasons when all crops fail that their condition becomes critical. These constitute about 40 per cent. of the agricultural population. The remaining 50 per cent. are cultivators of petty holdings not exceeding forty acres and going as low as ten or even five acres in extent. Their land, as a rule, is neither mortgaged nor sold. The Sowkars do not readily accept it as security for an advance. Cultivators of this class have usually a pair of bullocks, sometimes only one and often none at all They get assistance, when necessary, to till their land in some fashion from their neighbours and relatives, whom they requite out of the crop or by labour. Wretched crops are, even in average seasons, the outcome of wretched tillage in poor land. Where the soil is superior and the rainfall less precarious, as in the Districts of Poona and Satara near the Ghats, the average area cultivated by individuals is much smaller. The yield can be depended on, and the necessity of growing various kinds of produce no longer exists. The crop is expected to furnish the bare food-supply of the year or a portion of the year. For all beyond that, the poor cultivator and his family must look to labour elsewhere. When rain falls, the land lies waste, the bullocks and implements of husbandry, if any, are sold, and the cultivator with his family goes to work as near his village as he can get it. In thirty-two villages distributed over the Nagar District, I found that 46 per cent. of the occupants cultivated less than twenty acres each; 36 per cent. over twenty and less than fifty acres; 9 per cent. more than fifty and less than seventy acres; and the remaining 9 per cent. over seventy acres. With regard to assessment 35½ per cent. paid under R10; 34 per cent. over R10 and under R25; 19 per cent. over R25 and R50, and only 11½ per cent. paid over R50. Considering that the profits of

ordinary jirayat land, after deducting cost of cultivation, including a bare grain allowance of food for the labourers employed on it, cannot be estimated higher than from one rupee to one rupee and-a-half per acre; these figures tend to support the general opinion that the poorer cultivators of the Deccan, on an average of seasons, are unable to subsist on the produce of the land tilled by them. To the highest of the three classes of cultivators, the Sowkar is by no means indispensable, though he often proves most useful for purposes of temporary accommodation. The indebtedness, if any, of individuals of this class may almost invariably be traced to expenditure by him or his ancestors on objects suggested rather by a love of display than by necessity. But it is certain that under existing conditions, the middle and poorer classes, which together make up 90 per cent. of the agricultural population, have formed the habit, which they are most reluctant to resign, of constantly applying to the money-lender in order to meet agricultural and other exigencies. That the facility of obtaining loans has often been one main inducement to borrow, and that easy borrowing has begot foolish spending, is obvious. But it must be admitted that strong necessity frequently constrains the borrower. Failure of crops, whole or partial; death or superannuation of cattle; pressure for payment of assessment; want of seed for sowing and of grain to subsist on till the crop is ready; besides the needful performance of recurring religious rites: these are emergencies which continually arise, and which can be met only by a loan. Add the impossibility of starting the cultivation of land newly taken up without extraneous aid. Numerous other petty miscellaneous wants can only be satisfied by one whose thorough local knowledge enables him to render the required assistance promptly as the need arises. One chief reason why "tagai" advances from Government have been comparatively unsought is because they cannot be obtained at once and on the spot. Months may elapse before the rayat receives the money he has applied for; and often when he gets it the need for it no longer exists. Assuming, then, the absolute necessity of advances in some form to the ordinary rayat, it will be useful to consider what would be his position with regard to the money-lender but for the passing of the Act, and what is actually that position under its operation. The Sowkar advances to the rayat ultimately on the security of his land, or crops, or both, and it follows that, if that security be denied him (as I shall endeavour hereafter to show is the case), he naturally holds his hand. The tendency of the Act has been to perpetuate the blow dealt to the rayat's credit during the famine years. Now, as then, the Sowkar declines to lend because be sees no reasonable prospect of recovery. He was and is unwilling to add to what be regards as bad debts. In the absence of the restraining provisions of the Act, the favourable reasons succeeding the famine would have revived the rayat's credit. On the prospects of his crop, and on the security of land gradually resuming its normal value, he would have obtained advances pretty much as before. On the other hand, it may be supposed that the creditor would have executed his decrees with even increased harshness, anxious to recoup himself for his previous losses. Where the seasons, since the introduction of the Act, have been favourable, the advantages derived by the rayats from its provisions greatly overbalance its disadvantages. The Sowkar is debarred from his annual raid on the crop, and the rayat, secure of that and freed from the "fever" of his creditor, has experienced a most welcome and sensible relief. Where the seasons have been bad, the advantages and disadvantages have been much more nearly balanced. The truth is that the effects of the Act are as various as the varying conditions of things, not only in different districts but even in different localities of sub-divisions of the same district. They are modified by local circumstances; fertility of soil, natural or adventitious; facility of means of support supplementary to and apart from profits of agriculture; extent of land cultivated by individuals, and proximity of a ready market for surplus produce. To illustrate my meaning more clearly, I will take the talukas of Barsi in the Sholapur and Kopargaon in the Nagar District. In the former, the crops have turned out well since the Act was introduced, and other favourable conditions for prosperity, such as a good soil and an extensive carrying trade, are not wanting. There the people show a marked spirit of independence, and boast that they can do very well without the Sowkar. So they can for the nonce. But it may be questioned whether they are not living in a fool's paradise, and whether their opinions will not speedily change with circumstances. In Kopargaon, the crops have failed partially or altogether both during and since the famine. There the rayats have no special form of industry to turn to unconnected with agriculture. Accordingly the need of the Sowkar is greatly felt. Notwithstanding remissions and suspensions of revenue; in spite of liberal grants of tagai by Government, whole villages are deserted, the inhabitants having gone to work where they can get it. Most of the cattle have been sold off one by one for the support of the owners, and much of the land is uncultivated. But for the Act the sufferers would doubtless have got petty advances from the Sowkar. But at the same time all that is theirs—land, cattle, house, furniture—would have been pledged to the lender, whose bond-slaves they would now be. Though pitiable, their

present condition is surely preferable to what it would have been under the old order of things. Labour is well paid and living is cheap. A labourer earns four annas and his wife two annas a day. They can both subsist on the wages of the woman. They still retain their land and hope for the future. After the first rainfall they intend to return and lay out their small savings in a fresh attempt at cultivation. One good season will render them comparatively comfortable, and several such will restore them to their former social status. Between the two extremes of Barsi and Kopargaon, numerous conditions, corresponding closer to, or diverging further from, the one or the other, exist. It has been calculated that on an average every third season in the Deccan is a bad one. Taking, therefore, the ordinary cultivator as he is, and not as philanthropists would wish him to be, the conclusion is inevitable that he is unable even to live on the yield of his land without help. That a very much improved and more liberal system of tagai advances by Government would go far, if not all the way, to supply this need in ordinary times is the uniform opinion of those I have consulted on the subject. That the tendency of the Act is to induce habits of thrift and saving can hardly be questioned. That the rayats can enjoy peaceably the produce of their industry is an incentive to economy to which they have hitherto been strangers. There need be no serious apprehension that the Sowkar will cease altogether lending to agriculturists. They are as essential to him as he to them. It seems that, should the Act be continued, loans on credit will largely take the place of secured debts; that they will be more moderate in amount; and that borrowing and lending will be conducted with more prudence and reflection. The tendency of the Act is most wholesome. If the rayat can no longer get easily, he can no longer spend foolishly. With him everything is regulated by custom, and habits quickly become customs—even in a generation. Further, it is evident that the necessity for the Sowkar has become less urgent. The rayat of our day has hitherto had no chance of trying how he would fare if borrowing were put beyond his reach. By depriving him each year of the major portion of his crop, the money-lender has in truth been the main cause of the necessity, with which, he says, the rayat cannot dispense. No known system of agriculture, set aside that of the naturally poor Deccan, could sustain the annual drain on its profits represented by the interest due on the accumulated debts of the Deccan rayats. The sowkar in his present form is of comparatively recent birth—the offspring of our civil law. Under Native rule little aid was given by Government for the recovery of debts. Their mutual need and honest dealing determined the relations between creditor and debtor. Loans were then small in amount and advanced without security to reliable clients. Bad debts were rare owing to cautious lending and the severity of the social stigma affixed to the defaulter. The sowkar was on his good behaviour, and if he departed from it, the people had a summary method of bringing him to his senses. The Act seems likely to restore, in some measure, this not undesirable state of things. That much of the poverty of the Deccan is due to the system of cultivating small areas of land, and that for this the law of partition is partially responsible there can be little doubt. It would seem advisable that some reasonable limit be fixed by law to the breaking up of estates. The present tendency is for the members of the Hindu family to separate—for the individual to supplant the family as the unit of society.

Their ignorance.

3. Though the Relief Act has now been in force more than three years, its provisions are, only very partially known in localities away from the larger towns and centres of business. In the latter, indeed, the more intelligent cultivators are fully aware of their privileges, and show much shrewd readiness in taking advantage of them. In the smaller and outlying villages the ignorance of the inhabitants on a subject which so nearly concerns them is often startling. It is clear to them that they are unable to get loans as before. But they have neither curiosity nor intelligence enough to endeavour to ascertain the reason. They have a hazy notion that a way has been opened by which they can recover possession of their mortgaged lands. But their natural temperament induces inactivity and they wait for some one else to take the initiative, and to give them, by his success, encouragement to bestir themselves. What they assign special importance to, is that their land and the means of tilling it are no longer liable to attachment and sale for debt. As they express it the Sowkar has ceased to worry them. Those who alone are in a position to more fully instruct them are interested to keep them in the dark. The Kulkarni and the Sowkar are usually on the same side. The less intelligent rayats are still influenced greatly by the importunity and threats of the creditor. They are still misled in divers ways by designing persons. They appear to enjoy few of the advantages while suffering to the full the disadvantages entailed by the Act. Unless some special means are adopted to enlighten them, many of the most useful provisions of the law will remain, for a long time to come, unknown to those who have most need to resort to them. With some few exceptions, the District officers, overcharged with other duties, take little interest in the subject. Their information if [illegible] ...rived from

the Sowkars or from those instigated by them to attack it. Voluntarily, the rayat seldom comes forward to assert his views or sentiments. Impassive he quietly resigns himself to weal or woe, and avoids blustering about either. It thus becomes easy enough to learn one side of the question, but much less so to form a correct judgment of the other. I would suggest that an epitome, concise and clear, of those sections of the Act which chiefly affect the rayat be printed and posted up in every village chavdi, just as the chief provisions of the Railway Act are put up at stations along the line for the information of the public. Time and example must be relied on to do the rest. To distribute copies of the Act among the village authorities would, I believe, effect nothing. The Kulkarni would practically be the repository of the law and would be in a position to explain it according to his pleasure.

Advantages and disadvantages of the Act to them.

4. My experience is precisely contrary to that of Mr. Jopp, Assistant Collector of Poona, an extract from whose Administration Report for last year was sent to me. He says that the almost unanimous opinion of the rayats is that the Act has done more harm than good. I have not been able to visit the particular talukas in Mr. Jopp's charge, but in the numerous places through which I have passed during my late tour, I have found that by *all true* agriculturists the Act is regarded as their charter of safety, and that no measure of Government for many years past can be compared with it in point of popularity. The benefits derived from the Act are too important and too palpable not to make it quite certain that those cultivators, who speak against it, either themselves combine money-lending with their other occupations or are mere tools set up by interested persons. Owing to a run of fair seasons, indeed, the benefits conferred by the Act are even more apparent than the inconveniences arising from its working. Besides being secure in their persons and property, the rayats enjoy the long desired privilege of paying off their debts according to their means. This is a much prized concession. For the most part debtors will truly admit their obligations, and, as far as they can, are ready to discharge them by instalments equitably fixed. They are no longer debarred from the hope of one day becoming free and independent. They are far less oppressed and harassed by the creditor. They have ceased to regard him with slavish dread and to accord to his dictates a submission which no one else could command. The local power and influence of the Sowkar, more often abused than not, was paramount. All, or nearly all, with whom he came in contact were his debtors, and so his servile and fawning sycophants. The effect of the Act has been to change all this. Instead of carrying to his house their entire crops after harvest, and getting back only what he might choose to bestow for their maintenance, the rayats now use their own houses as their granary from which they dole out to the creditor according to their pleasure or means. In the case of the poorer cultivators this necessarily represents very little. The only apparent disadvantage to the rayat resulting from the Act is that he is unable to get loans with the former facility. Though the area of land under cultivation has greatly increased year after year since the introduction of the Act in the four districts, it must not be forgotten that a large number of acres, comprised in the holdings of most villages in the poorer portions of the four districts, remains unsown. A good deal may be accounted for by the very desirable custom of putting aside a fifth or a sixth of the holding in alternate years for grazing or fallow purposes. But much land remains unsown owing to the difficulty of getting bullocks to cultivate it. It is significant that out of the eleven talukas of Nagar, there was a decrease this year in land lying fallow in all except Kopargaon, where the increase was 6,400 acres. Here the chief damage was caused by locusts. No doubt, but for the protective character of the Act, the Sowkar would in numerous cases have advanced the wherewithal. The statement below shows the percentage of land in holdings remaining unsown to the total cultivated area :—

Name of District.	Cultivated area.	Land in holdings temporarily allowed to lie fallow.	Percentage of column 3 to column 2.
1	2	3	4
Poona	1,786,064	209,446	11·7
Satara	1,386,746	278,604	20
Ahmednagar	1,958,213	292,54[illegible]	14·9
Sholapur	1,873,096	296,338	15·5
Total .	7,004,119	1,070,936	15·2

In most cases I discovered on enquiry that the land had been untilled since the famine. The owners explained that they retained it hoping that a bumper crop would at last give them the means of bringing their fallow under cultivation. Their last thought was to resign it. If they did, they would probably be unable to get it again when they wanted it. The avidity with which land is taken up, and the tenacity with which it is held, afford good evidence of the hopefulness and resources of the people, though their frequent retention of more land than their means justify is to be condemned economically. As good evidence of the popularity of the Relief Act and the appreciation of its benefits by the cultivators, I may observe that the inhabitants of Native States adjoining British territory, where the Act is in force, evince much anxiety and eagerness to have it applied to them. They acknowledge the difficulty of getting on in bad seasons without advances, but against this they set off the advantages of being able to recover their ancestral lands, of having their accounts with the money-lender properly kept and payments duly acknowledged, and, above all, of seeing a way to liquidate just debts by instalments fixed according to their means.

Signs of improvement in their condition.

5. Signs of improvement in their condition can best be realized by reflecting what it would probably have been but for the restraining power of the Act. The area to which the Act was applied is perhaps too extended to admit of its economical effects becoming known with any very great minuteness or precision. Had the experiment been confined to one or even two districts, the details of its working could have been observed and noted with more ease and accuracy. Where the crops have been good since its introduction, there is a general consensus of opinion that the people are better off. They themselves bear loud testimony to the fact. The immense amount of material wealth, which would have gone to swell the hoards of the monied classes, has been intercepted in transit and remains distributed among the producers. These have perforce reduced their customary expenditure, and, feeling that they have to depend on their own resources alone, and can no longer look to the sowkar for aid, are necessarily acquiring habits of thrift and forethought. I know it is a favourite theory that the rayat is incapable of providence. But it must be admitted that no cultivators in the world live more frugally as a rule than those of the Deccan, and their occasional bursts of extravagance cannot be indulged in when they can no longer get the needful funds. Contrasted with the people of Kaladgi, where the conditions of agricultural life are not unsimilar, those, even of Sholapur, the poorest in material resources of the four districts, appear in a favourable light. They are better fed, better clothed, and better housed. The area of land taken up for cultivation has steadily increased year by year in all the four districts—even in the northern talukas of Nagar, where partial scarcity has prevailed for several seasons in succession. No abnormal pressure has been needed for the collection of the land revenue, though the burden of enhanced assessments furnishes the principal subject of complaint to the cultivators. No doubt bullocks and other property necessary for the tillage of the land have often been sold to satisfy urgent demands of subordinate officials whose competency is gauged by the sum collected without recourse to legal forms of compulsion. In two of the talukas of Nagar where much harm was caused by the locusts last year, I made special inquiries at the large cattle marts held weekly in the neighbourhood with the object of ascertaining whether the people had been forced to part with their cattle to meet the Government demands. I found that no unusual number of sales had taken place at or about the time when the instalments fell due, and that the ordinary selling price of the animals remained unaffected. For the most part, it may be said that the revenue of the year was paid out of the crop. Where a portion of the "kharif" outturn was destroyed by locusts, the "rabi" crop was so good as to suffice for the payment of both instalments. The produce of the land was sold in the open market without difficulty at prevailing rates without the intervention of the sowkar's agency. Formerly, the entire crop was taken by the creditor who gave something out of it for the subsistence of the debtor and advanced him the money to pay his assessment. Here is a clear gain to the rayat. The better class freely admit that they *do* save something out of one year's crop to meet the necessities of the next season. In fact, they consider that they would not be justified in paying anything on account of their old debts until they had made a suitable provision for their needs up till next harvest. I believe the rayat is ordinarily disposed to pay debts, found on enquiry to be fairly due, according to his means, and that instalments fixed by the Court or privately are generally discharged with punctuality. The sowkar of course makes the most of cases where their inability to pay has kept him out of his money, or where sometimes temptation to dishonesty has been too strong for the debtor. The creditor's complaint that debtors are impregnated with the spirit of dishonesty and will pay only on compulsion is exaggerated and untrue. The best proof of the existence of a saving spirit

among the people and of the general improvement in their condition is that the rayats have managed to exist without extraneous aid during the last few years, even in localities where a run of bad seasons must have reduced them to grievous straits. Labour has become more constant and steady, and a general advance has taken place in the rate of wages throughout the four districts. Perhaps the same facts may be noticeable throughout the agricultural districts of the Presidency, and should not be attributed to the influence of the Act. On this point I am uninformed. But that more highly remunerative wages are earned in the Deccan than formerly there can be no question. Expenditure on ceremonies—births, deaths, and marriages—has been greatly reduced from its former rate, and that this reduction is of a lasting character and not the result of want of means alone is borne out by the fact that even the richer classes are less profuse. While admitting so much they ascribe the cause to losses brought about by the working of the Act. Occasionally such may be the case, but the general effect was consequent on the famine, and the habits, adopted then under constraint, have survived by choice. There is no indication that marriages have diminished in number, but only that they are celebrated on a less pretentious scale, according, indeed, to the means of the contracting parties. Good crops and freedom from the grinding pressure of indebtedness have combined to put saving within the power of most of the more prosperous cultivators affected by the Act. I have found it quite futile to attempt to discover the sources from which money to pay the assessment was obtained in each individual case. The occupant invariably suspects the object of the enquiry and evades a direct answer. I think that the general question alone is important. Where the instalments paid, and that without unusual pressure? Similarly, only some of the causes of resignations and transfers can be traced. In parts of the Deccan it is customary to till land for a few years, and then throw it up or change it for other land that suits the cultivator better. Here, again, the general result can alone be trusted! Has the area of cultivated land increased or diminished? What amount of land entered in Government records as cultivated remains unsown? Details of great minuteness on these subjects will be supplied on demand, but the officials, who do their utmost to secure accurate returns, will admit that they are necessarily misleading and unreliable.

Co-operation among them.

6. Though there are at present no symptoms of any systematised co-operation among the rayats for mutual aid, still it is certain that, impelled by necessity, they assist one another more freely than before the passing of the Act. Many instances might be cited where well-to-do cultivators habitually advance seed to their poorer relatives or castemen, not for profit, but from a sentiment of kindness arising from real or imaginary kinship. Bullocks are similarly frequently lent for cultivation, the lender being requited by services rendered on his land or otherwise. In the Sholapur District I verified two striking instances of the strong feeling of brotherhood which may still animate the village community. In one case, four prosperous cultivators combined to subscribe the amount required to pay off the mortgage on another's land. In another's several cultivators together purchased a pair of bullocks for a poorer brother who had applied to the Sowkar in vain. In neither case, so far as I could discover, was any acknowledgment taken or demanded from the person benefited. He was trusted to return the advance when he could. It may be that hostility to the Sowkar is as likely to produce such exceptional instances of generosity as pity for the object of benevolence. Whatever the motive, such cases would have scarcely occurred under the former order of things, and they serve to illustrate a tendency which promises to spread. The plain meaning of such a tendency is that the more intelligent and solvent cultivators are beginning to supplant the ousted professional money-lenders—a consummation devoutly to be wished for. The former are far more controlled by local opinions and influences. They have other occupations of a humanising nature. Their whole souls are not given up to the pursuit of gain. They are satisfied by moderate profits, and their dealings with their clients are conducted on terms of greater mutual confidence and fairness. His fellow-cultivators seldom complain of the Koonbi Sowkar. Their grievance is against the Brahman and, especially, the alien Guzur or Marwari. To what extent transactions between cultivator and cultivator have increased since the introduction of the Act cannot be fully known from registration records, because small advances are usually made on credit. But from the Inspector General's Report of 1881-82 it appears that more than half the instruments registered relating to immoveable property were between agriculturists. Sales and mortgages of land by cultivators to cultivators were largely in excess of similar transactions between money-lenders and cultivators. In more than half the total transactions Sowkars had no hand at all, and the far larger portion of those in which they were concerned related to leases

Their relations with the Sowkar.

7. Their relations with the Sowkar vary according to their knowledge and the individual character of the money-lender. In some few villages they have been little, if at all, affected by the Act. In transactions between lender and borrower neither side has ever appealed to the law. The Sowkar is respected, and his dealings with his clients are fair, and at times even generous. There is no grievance to redress. The Sowkar is regarded as the rayat's friend, and readily helps him in the day of need. But this desirable state of things is rare, and tends to become still rarer. In other places the people are so ignorant of the provisions of the Act, that their dealings with an awe of the Sowkar remain much as formerly. Where the Sowkar has shown himself harsh and inconsiderate, and the people have at the same time grasped the true scope of the relief measures, his rupture with them is complete. Several instances have come under my notice in which he was fairly boycotted. None of the villagers would work on his—or as they regarded it their—land; and labourers brought at double cost from elsewhere were frightened away by threats. The dhobi refused to wash his clothes and the barber to shave him. His cattle were impounded and his crops uprooted. He could get no redress because no one would venture to give evidence in his favour. The villagers had evidently made up their minds to compel him, if possible, to give up the land mortgaged to him in despair and to take himself away. The entire community, from the Patel downwards, appeared to be leagued together against him. But generally speaking, the Sowkar, without closing his transactions with agriculturists, has greatly reduced them. He lends cautiously with an eye to his man. Fresh loans are not numerous. The Inspector General of Registration states in his report for last year "that about two-thirds of the total transactions registered were merely to substitute documents for old debts." Advices are often made as an inducement to the debtor to give fresh bonds for time-expired ones. Several of the latter are offered in return for a fresh one of a much smaller aggregate value. The ignorant debtor thinks he is making a good bargain and is glad to keep on terms with his creditor, while the latter is pleased to get anything in exchange for his worthless paper. For the most part creditors show an anxiously conciliatory disposition. Numerous debts, secured and unsecured, are settled amicably on terms often seemingly as favourable to the debtor as he would have obtained if he had gone into Court or before a Conciliator. It is true that the Sowkar no longer lends readily on mortgage security unless the land is exceptionally valuable. He usually demands an out-and-out transfer of the land, and from the poorer class of cultivators will ordinarily accept no other form of security. But the rayat's wits have become sharpened and they decline to part with their land except in the very last extremity. During the past few years no such general pressing necessity has arisen. Accordingly, sales of land have been by no means numerous. Those that have taken place are, I am informed, usually of only a portion of and not of the entire holding. The rayats are now wide-awake enough to resist the temptation of parting with their land for ever in consideration of the temporary convenience of a loan. Neither are they any longer cajoled by the fiction of an oral understanding to the effect that the nominal sale will be treated as a mortgage only liable to redemption at any time. In many redemption suits the rayat has found this verbal promise to be a broken reed. The defendant disclaims any such agreement and stands by the terms of his deed. The cultivators often urge, with some show of plausibility, that sales of land, where possession has never left the vendor, should be treated by the law as mortgages and liable to redemption. But it will often be found that the vendor is deserving of little pity, the transaction being a colourable one contrived to defeat the claims of a judgment-creditor who has taken out execution against the land. Mortgages are nearly always with possession. Hypothecations are rare . In many cases the Sowkar has as much land as he can manage, and refuses to undertake more. As a rule, he does not cultivate himself, but puts in a tenant, usually the mortgagor, who farms the land on terms resembling those of the Metayer system. It is often difficult to get any tenant other than the mortgagor, the rest of the cultivators of the village esteeming it a matter of honour not to supplant him. Outsiders would not be tolerated. Should the mortgagor neglect to pay the stipulated share of the produce, a civil suit is the only method by which he can be ejected or even made to pay his rent. A case was brought to my notice in which the tenant and former owner on being ejected summarily from the land by the landlord, who was dissatisfied with him for some reason, was restored by the Mamlatdar to possession and succeeded in carrying off the crop which the landlord had sown, before being ejected by the Court, the landlord as occupant being compelled to pay the assessment. To avoid such results the mortgagee now usually takes possession, putting in his mortgagor as tenant for a fixed term. On the expiration of the term possession can be obtained and the tenant ejected by suit in the Mamlatdar's

Court. The procedure is summary and inexpensive, and it is probable that such suits will largely increase in number. The Inspector General of Registration reports last year that most of the transactions in which Sowkars were concerned related to leases. On the whole, it may be said that relations between Sowkar and rayat are strained and unsatisfactory. The rayat's credit is so far impaired that a higher form of security is now demanded from him. The lender who before the Act would have given on credit now requires a mortgage or pledge; where he would have been satisfied with an hypothecation, he now insists on a mortgage with possession; where a mortgage with possession would have contended him, he now refuses the advance without an absolute transfer.

The Sowkars.

8. They are unanimous in the conviction that the Act is levelled against them, and that the Legislature in framing it intended to immolate them as a class, and to render money-lending to the rayat an impossible thing. They point to the very title of the Act as well as to the executive duties that have been entailed under it on the Subordinate Judges, to prove an inevitable bias adverse to them on the part of those entrusted with the administration of the law. They consider that the retrospective clauses of the Act constitute a distinct breach of faith on a par with what they regard as the confiscation of their purchased rights in watan lands before the passing of the Watan Act. It was in the confidence that contracts sanctioned by the existing law would be enforced according to it that they became parties thereto. They say that the provisions of Sections **12** to **14** of the Act, under which the Court is required to go into the history of transactions summarised by a bond or mortgagedeed, even though the claim be admitted, is tantamount to advising the debtor to dispute the claim which he knows to be, and is ready to acknowledge as, a just one. Their attitude is one of extreme apprehension, distrust, and discontent, not unmingled, however, with hope. Many Sowkars have stated to me on my asking their objection to make future advances on mortgage security, that the law is so uncertain and one-sided and changes in it so frequent and always so favourable to the debtor that the only safe course for them to adopt seems to avoid money-lending to agriculturists for the present altogether. They believe that they are indispensable to the rayat, and that the force of circumstances will soon show the correctness of this notion; that the relief measures are merely experimental and are doomed to ultimate failure; and that the former order of things, with unimportant modifications, must ere long be restored. So convinced are they that justice is not to be obtained by them under the Act that my information makes me believe in their willingness to compromise debts at one-half or less their actual ascertained amount paid down in cash. Numerous offers, apparently genuine, on these terms have been made by Sowkars of position and respectability. It is true that the monied classes, by every means in their power, strive to exaggerate the evil of the Act, and to make it appear that their dealings with the rayat cannot go on while it is in force. Of course, their object is to get it repealed or modified. When they find that the Legislature is serious in protecting the land and the means of tilling it permanently, and that no agitation will restore the creditor to his former power over them, he may in some cases partially resume his usual transactions, though in a more cautious spirit and on a less extravagant scale. But looking at the entire break-down of Section 22—his intended stay and support—I hesitate to entertain this hopeful view for the future. Unless the Sowkar is assured of a fair chance of recovering his advances with interest at a fixed and certain rate, it can hardly be expected but that his business will be of the most contracted kind.

Feeling with regard to the Act.

9. Three-fourths of the Sowkar's dealings were with agriculturists. The effect of the Act has been to restrict these transactions within very narrow limits. Normal relations, interrupted during the famine years, have not been resumed. The introduction of the Act immediately followed those evil days. A few old clients of each Sowkar, whom he is accustomed to treat with consideration and confidence, still continue their dealings with him as before. They have suffered no grievance, and to them the Act is without significance. Their feelings are strongly opposed to litigation, and they prefer almost any sacrifice rather than resort to the Courts. With such the relations of the Sowkar are undisturbed except that, even to them, he lends more doubtfully and more in a spirit of speculation, not knowing when they or their successors may become infected with the prevalent disinclination to pay their debts. A large number of persons still neglect to assert, or are wholly unaware of, their novel rights. Both these classes comprise a relatively small and ever diminishing proportion of the population. To the ordinary cultivator advances are now made on out-and-out transfers of immoveable property, sometimes on mortgage with possession, on the security of valuables

Effect of the Act on money-lending.

deposited with the lender, and lastly, on credit usually in small sums, where the credit of the borrower is exceptionally good. The decrease in transactions reduced to writing is sufficiently attested by the statistics of registration and the returns from General Stamps. There were 112,655 transactions of all kinds registered last year under Section 56 of the Act, showing a decrease of 42,626, or 27 per cent., as compared with the preceding year's figures. There were 6,763 sales of immoveable property against 8,031 the year before, or a decrease of 1,268. Mortgages with possession fell from 31,370 to 17,920. The number of bonds showed a decrease of 17,593. The Inspector General observes—"In more than half the transactions the Sowkar had no hand at all, and the far larger portion of those in which they were concerned related to leases." The professional money-lender does not usually cultivate the land himself, but lets it out on the Metayer system. The contract with the tenant is denominated a lease. Where another cultivator is the mortgagee, he usually cultivates himself and dispossesses the mortgagor. It will be interesting and instructive to compare the figures supplied by the Inspector General in his Annual Report for 1882-83, with those given above. I have not been able to obtain access to them. The figures in the statement given below have been supplied to me by the Collectors of the four districts. As stated in paragraph 7 of this Report lenders are reluctant to advance on mortgage security unless the land is exceptionally good. It is found that Satara heads the list with mortgages on land followed in order by Poona, Nagar, and Sholapur according to the relative superiority of their soils :—

General Stamps Receipts.

Name of District.	1879-80.	1880-81.	1881-82.
Ahmednagar	64,720	45,359	36,792
Sholapur	32,862	28,080	26,395
Poona	89,205	86,750	66,684
Satara	76,586	72,094	49,885
Total .	2,63,373	2,32,283	1,79,756

Statement showing the number of sales, mortgages, leases of land, and money bonds, registered in the Districts of Poona, Satara, Sholapur and Nagar in 1880-81 and 1881-82, under Act III of 1877 and Section 56 of Act XVII of 1879.

Name of District.	Sales of immoveable property.		Mortgages of immoveable property with possession.		Mortgages of immoveable property without possession.		Leases of immoveable property.		Money Bonds.	
	1880-81.	1881-82.	1880-81.	1881-82.	1880-81.	1881-82.	1880-81.	1881-82.	1880-81.	1881-82.
Poona . . .	2,358	1,805	23,351	7,239	8,086	1,198	13,472	12,793	21,236	15,155
Satara . .	4,623	2,887	35,500	14,221	*	*	8,889	7,134	18,579	13,036
Sholapur . .	1,369	1,010	3,337	1,388	*	*	2,534	2,204	5,443	4,508
Ahmednagar .	1,764	1,028	11,956	2,003	1,322	350	6,732	4,420	16,991	10,011
Total .	10,114	6,730	74,144	24,851	9,408	1,548	31,627	26,551	62,349	42,710

* Separate information wanting. Both kinds of mortgages are entered in the statement under "mortgages with possession."

From the Inspector General's report it would seem that the majority of newly-registered transactions were between cultivator and cultivator, and that those between professional money-lenders and agriculturists were mostly to keep alive old debts. As far as I can discover, this year's figures promise to afford further confirmatory evidence of the tendency here indicated. There can be no doubt that a shrewd blow has been dealt to the trade of money-lending. Approximately it may be asserted that transactions between Sowkars proper and agriculturists have been reduced 75 per cent. of their amount previous to the famine years. It is also clear that the petty Sowkars or middlemen are the chief sufferers. For one year alone many of them were protected by the extended definition of the term "agriculturist." They are no longer able to shield themselves against their creditors, while their own debtors are the favoured agriculturists. A considerable number, however, are themselves agriculturists

within the definition, and as such, enjoy to the full the exemptions and privileges accorded to their class. Their exceptionally advantageous position may account, in some measure, for the very significant increase, noted above, in transactions where both parties are cultivators. Many sowkars' account books which I have examined show that the estimate of reduction in their profits, here hazarded, is far below the truth; but they are not, as a rule, to be relied on. To avoid the trouble and expense of registration much money is advanced on credit without any written acknowledgment. In numerous cases capital has been directed from money-lending into other channels. Much of it has been absorbed in cotton, grain, and piece goods trade. Many petty Sowkars have given up money-lending altogether and have betaken themselves to farming or shop-keeping or both. Rare instances occur where they have left the scene of their former calling. But their departure may easily be ascribed to causes independent of the working of the Act. I have been unable to authenticate a single case in which the ruin and consequent breaking up of his home by a Sowkar could be traced directly and with certainly to the results brought about by the Act. Their accumulated hoards alone will suffice for many years' subsistence yet. At present there is no indication of widespread ruin among the class. Nor does it seem that they have any intention of leaving these districts and going where capital is less hampered. The villages where they live are really their homes in which they have settled down for good. Moreover, they have not yet managed to settle old scores. Much mortgaged land is on their hands, and their presence is necessary until the encumbrance is cleared off. If then ruin and a general exodus of the professional money-lenders is to take place, we must look for them further into the future. Dealings with petty shop-keepers, artizans, and the like are unchanged; though fear is entertained that they may seek to avoid their obligations by making themselves out to be agriculturists. The larger Sowkar must also have suffered through the losses of the smaller owing to the latter's inability to repay loans; and it is possible that in some cases they may have found it hard to meet their engagements with the great trading houses in Bombay. But this is a mere surmise. The continued decrease year by year in the revenue from license-tax affords another index of the Sowkar's diminished profits. Most of them complain, and often no doubt justly, that they are still greatly overtaxed :—

License-tax Receipts.

NAME OF DISTRICT.	1879.	1880.	1881.
	R	R	R
Ahmednagar	74,982	43,777	38,683
Sholapur.	58,722	32,407	24,403
Poona	86,861	48,063	45,907
Satara	93,135	58,291	48,246
TOTAL .	3,13,700	1,82,538	1,57,239

Difficulty of recovering debts in the Courts.

10. It must be admitted that after the history of a debt has undergone a searching enquiry by the Court—after a fair and equitable award has been made to the creditor for the recovery of his debt by instalments or otherwise according to the ascertained means of the debtor, the former is entitled at least to expect that the terms of the decree will be strictly and promptly enforced, and that no further leniency, unless on most exceptional grounds, will be shown to the judgment-debtor It would appear that the law and the practice of the Courts debar the decree-holder from realizing even these reasonable anticipations. A decree is obtained on a money-bond and payment by instalments, the ordinary form of decree, ordered. The debtor fails to pay the first when due. If the order of the Court be, as in some instances, for the recovery of the whole sum in case the first instalment is not duly paid, the creditor will naturally claim the entire amount at once, and the Court will grant his application. In case no such order be passed, he will have to make a fresh application and incur fresh costs for each overdue instalment. And in either case it is hard to see from what source the debt is to be recovered. The land, cattle, house, implements of husbandry, and practically the produce of the debtor's field are exempt from attachment and sale. These constitute his all in the vast

majority of cases. The writ will be returned with "no assets" endorsed on it. The dates fixed for payment will then be postponed, or the amounts payable revised and modified, or the surplus land, if any, will be made over to the Collector's management under Section 22. The debtor laughs at the decree. He knows it is innocuous. I say that practically the crop is protected against the creditor, because it is classed with immoveable property while standing, and out of it, when cut, the Government assessment has to be satisfied before the creditor can touch it. Grain "husks" to village servants are also a somewhat heavy charge on the crop, especially in the case of Mahars whose services are really more utilized by Government than devoted to the village community. With respect to any surplus remaining after these deductions, the provisions of the law, by discouraging *ex-parte* decisions, render publicity of proceedings against agriculturists obligatory, and the debtor has, if so disposed, abundant opportunity to dispose of such surplus before the formalities preceding the execution of the decree have been complied with. In most cases he will hardly refrain from availing himself of this chance. It is certain that the rayat, now that he has the upper hand, is not slow to apply to his creditor those lessons of dishonesty which, it must be confessed, were taught him in the first instance by the latter. At all events, the fear of such an issue is strong enough to deter the creditor from throwing away in costs good money after bad. Neither costs of suits nor costs of execution can be considered light. Accordingly, the number of suits on money-bonds is small and tends to decrease. The few that are instituted are mostly to keep the debt alive when its amount is considerable. Fresh applications for execution are made merely to prevent the decree from becoming time-barred in those cases where the creditor has reason to expect that his judgment-debtor will some day be in a position to pay. There are at the present moment lakhs of rupees' worth of money-bonds and unexecuted decrees lying idle in the Sowkars' hands. No doubt, a great number had been allowed to expire before or during the famine. But many are still enforceable according to law, though the holders disclaim any intention of taking proceedings on them. The creditors are endeavouring by every effort—by threats, by entreaties, by appeals to past favours, even by small douceurs of ready cash—to induce their clients to come to terms privately. In the Nagar and Sholapur Districts, this year while the crops were still standing, I found them busy, visiting the cultivators who owed them money and consenting eagerly to the best compromise they could get—the debt to be paid after the crop was reaped. With regard to debts secured by mortgage, I am informed that, previous to the decision of the High Court in March 1881 that instalment decrees were not applicable to mortgage cases, it was the practice of some of the Courts, only in very rare instances, to order payment by instalments in such cases. By Section 15 of Act XXII of 1882 instalment decrees have now become applicable to mortgage cases. This provision came into force only on the 1st February last, so that no sufficient opportunity has yet occurred of observing how it works. It may be supposed, however, that the creditor will find no particular difficulty in obtaining his decree. His troubles will begin when he seeks to execute it on default of payment of instalments. It seems likely that in mortgage cases the usual decree will be for payment by instalments—as being the legal alternative most beneficial to the debtor. It is further probable, for the same reason, that ordinarily decrees will not order the whole sum to be recoverable on failure to make payment when due. It follows in that case that a fresh application involving fresh costs will be necessary for the recovery of every overdue instalment, and that in each case the same formalities attending execution must ensue. The excessive trouble and expense of these execution proceedings is palpable. The game is not worth the candle. The Court, too, may give the defaulter time by fixing some future date for payment of the instalment overdue. In case of several such failures an order will be ultimately passed for the sale of the land and transferred to execution for the Collector under Section 320 of the Civil Procedure Code. On receipt of the reference that officer proceeds by sending the papers to the Mamlatdar, who, when he finds time, calls the parties to the decree together and endeavours to prevail on them to come to terms, without having recourse to sale of the land. Sometimes a second agreement for the liquidation of the debt by instalments is entered into before the Mamlatdar, with probably a similar result as before. It is obvious that such a lame settlement means simply that the pressure and bother have been too much for the judgment-creditor, who is reduced to a frame of mind that will agree to anything which promises a speedy release from present discomfort and fruitless expenditure. In case no other arrangement can be arrived at, the land is sold often after a long delay, during which all arrears of interest are lost to the decree-holder. Whether the decrees are executed by the Collector in order of arrival or not, I am uninformed; but it will be found that the arrears on his file are very heavy, and that he is quite unable to meet the extra demand from his own establishment. Owing to a succession of bad seasons in parts of the Nagar District, the execution of such decrees

has been suspended for several years past. In short, every effort is made to prevent the land passing out of the hands of the debtor. It is not surprising that a considerable number of decrees are struck off the file of the Courts owing to the failure of the creditor to apply for execution within the time allowed by law. It is a fact that in the greater number of decrees no reference is made to the Court at all. That is, some few are settled privately and notified to the Court; while no action at all is taken on the majority, because the creditor despairs of any favourable result. With the object of showing the very faint hope entertained by creditors of recovering sums decreed to be due to them, I have attempted to obtain statistics setting forth the number of decrees executed against agriculturists, their aggregate sum, and the amount recovered under them, the number of applications for execution struck off the files of the Court owing to the creditor's neglect or failure to proceed further; and the number of decrees on the file for execution of which no applications have been received since the introduction of the Act. The figures, however, supplied to me are so incomplete and unreliable that I have felt it worse than useless to cite them. I will therefore merely refer on this point to paragraph 23 of Dr. Pollen's report for last year. He says that during the year 3,218 applications for execution of decrees passed in suits falling under Chapter II were made. In only 172 cases out of these was moveable property attached and sold. The total amount decreed and the total amount recovered are not given. But from frequent enquiries at individual Courts I infer that the percentage of the latter to the former was small. In 722 cases satisfaction was disentered after private adjustments. In 1,425 cases applications are shown as "otherwise disposed of"—including private settlements not certified to the Court—cases in which no property was found, and cases in which the decree-holder took no further steps to execute his decree. The remaining 899 applications were, I presume, still pending at the close of the year. These figures speak for themselves and need no comment. I suppose I may assume that private settlements not certified to the Court are rare, and that most of the 1,415 applications "otherwise disposed of" were not proceeded with owing to the debtor having no moveable property on which the decree could be executed. In some cases the fact was discovered through the agency of the Court; in others, the creditor refrained from proceeding further, having otherwise ascertained that it would be useless. As far as I can judge, matters have little, or not at all, improved in this respect since last year. Again, in cases of debt, secured or unsecured, the creditor is called upon to prove the history of the transaction from its origin. This he often finds it quite impossible to do. If a personal debt, it probably had its origin in a few rupees lent from time to time as occasion arose, and of which no record was kept, except, perhaps, an entry in the ledger or even on a slate. After these petty sums had reached a respectable figure, a bond, and subsequently a mortgage, was taken, the previous record of the debt being destroyed or erased. The origin of ascestral debt would naturally for the most part remain unknown. When a new bond was passed, the old bond was, or should have been, returned to the obligee. Fairly considering all the difficulties in his way, it cannot be a matter of surprise that the creditor fight shy of the Courts. Many instances have occurred in which the Subordinate Judges, on the application of the judgment-debtor, have revised the amount of decreed instalments and reduced them. I venture to question the legality of this practice, which, followed out to its logical result, would render decrees mere formalities to be set aside at the Court's arbitrary pleasure. Previous to a recent decision of the High Court it had been a not uncommon practice in some of the Courts in redemption suits to the plaintiff, not only his land free from encumbrances, but to order payment to him by defendant of any sum found, on striking a balance of account, to have accrued to him in excess of the mortgage money and equitable interest. Fear of such consequences is even yet present in the mind of creditors. Add to all these obstacles, risk, uncertainty, apprehension, cost and delay, the necessary proceedings before the Conciliator prior to the institution of a suit, and the causes of decrease in litigation will not be far to seek. The small number of decres executed and the insignificant amounts recovered under them will best show, as I have before stated, what hope the creditor has of seeing his claim satisfied. Enough has been said to prove that the Sowkar is practically debarred by the Act from resorting to the Courts. With regard to instalment decrees, it is worthy of note that by Section 230 of the Civil Procedure Code a decree dies in twelve years after application for execution; but by clause (b) of that section, instalment decrees might apparently remain alive to any length of time where the instalments extend over a long period; twelve years being allowed to run after each application for execution on each separate overdue instalment. In awarding interest it would seem advisable that the Courts should be guided by some fixed standard rate determined, after due consideration, for secured and unsecured debts severally, and that what is a reasonable rate should not be left altogether to the discretion or caprice of individual Judges. Creditors loudly complain of the uncertainty and inequality of the rates of interest awarded under the existing system. Again

the calculation of the profits of land while in the possession of the mortgagee is a difficulty uniformly acknowledged by the Subordinate Judges, and which there seems no satisfactory mode of solving. No fixed standard can be applied suitable to all cases. Each case must be judged on its own merits, and the judgment must of necessity be in very many cases little better than guess work. Rightly or not the creditors vehemently assert that in redemption suits their profits are unduly enhanced and their losses unduly depreciated. It is hoped that a series of decisions, extending over several years, will furnish various standards by which to estimate the approximate average profits of different classes of land. This will, when far enough advanced, be some sort of guide, but often a very fallacious one, I fear. It is a question, whether, in cases of mortgage with possession, agreements to take profits, in lieu of capital and interest, should not be permitted to run their time. The term would generally be determined by the parties with due regard to the average profits and with a knowledge and interest vastly superior to those of any one else. At all events, if the mortgagee can show that he has expended capital on the land under the assurance that it would remain in his possession for a certain term, he is entitled to compensation, if that term is curtailed against his will. The rayats themselves are so sensible that their relations with the Sowkar are imperilled owing to the very full protection accorded to their property under the Act, that intelligent men among them have often suggested to me that even simple debts might be liquidated by giving possession of the debtor's land to the creditor for a term during which the profits from it might be calculated by the Court as sufficient to pay off the debt. In other words, this is a mortgage with possession, the profits of the land being taken in lieu of capital and interest. There seems no need for the law to step in and provide for such a settlement. The parties can, if so disposed, arrange it privately.

Decrease in litigation.

11. The decrease in the number of suits filed against agriculturists since the introduction of the Act is the strongest proof of the creditor's disinclination to resort to the Courts. There is every reason to believe that the decrease will continue and will become still more marked as old debts are settled. Dr. Pollen thinks that the falling off in litigation, which he allows was about 20 per cent. of the average last year, is insignificant when considered in connection with cases settled by conciliation. But I venture to think that many settlements are made before Conciliators, which would not, and could not, have been the subject of a suit. For example, it may be taken for granted that agreements are often admitted on documents, time-barred, unregistered or unstamped by the conciliator. If the parties are satisfied, it is not for the conciliator to raise objections on technical legal grounds, even supposing he were ordinarily aware of their existence. If the parties neglect to show cause why such agreements should not be filed, the Subordinate Judges would hardly refuse to file them. Decrees passed before the Act cannot be executed without previous reference to the conciliator; and I believe (though here I am open to correction) that each fresh application for execution of the same decree must be accompanied by a fresh certificate. Some deduction on this account must be made from the cases settled by conciliators. They cannot certainly be regarded as intercepted suits. Again, certificates must be obtained before bringing agriculturist suits in the Courts of the Village Munsiffs, though it it is not likely that very many of such cases go beyond the conciliator. Lastly, the average of the ten years from 1870 to 1880 seems misleading, as those years include the famine period when the ordinary course of litigation was checked, if not suspended. And then it is former transactions that mostly form the subject of suits. Suits on transactions with agriculturists of a recent date are comparatively rare. A better test would perhaps be the average number of suits filed during the ten years immediately preceding the famine :—

Name of District.	Number of suits instituted in 1880.	Number of suits instituted in 1881.	Average of ten years from 1866 to 1875.	Average of ten years from 1870 to 1880.
Poona	3,161	4,723	7,968	8,072
Satara	2,712	4.501	13,061	11,155
Ahmednagar	3,469	4,337	16,531	11,142
Sholapur	2,453	2,981	6,171	5,735
Total	11,795	16,542	43,731	36,106

Perhaps, however, I ought not to lay much stress on this point, as in none of the district affected by the famine and outside the operation of Act XVII of 1879 have suits reached

the figure at which they stood before the famine. The number of suits filed in 1881 was greatly in excess of those filed in 1880, the first year of the Act, when litigants were unacquainted with, and fearful of, its novel provisions. In 1882 about 245 suits were instituted more than in the preceding year. The excess is more than accounted for by the greater number of redemption suits by debtors against creditors. The total number of these suits in the four districts was 2,438. The number of suits by creditors against debtors may, therefore, be said to have diminished by 2,193. It is noteworthy that the redemption suits instituted in the Satara District during the year exceed in number those of the other three districts together, and that they are mostly by cultivators against cultivators. This result is, I think, owing solely to the better material condition of the people arising from superior soil, lighter assessments, and good seasons, by which the means of prosecuting their claims in the Courts have been put within their reach. There is no reason for supposing that the people of the Satara District are more intelligent than those of either of the other three districts. The great number of mortgagee cultivators is good evidence of the prosperous circumstances of the class. It may be noticed that in Sholapur—the poorest of the four districts—only 286 redemption suits were filed in 1882, a less number than in either of the other districts. The decreased litigation cannot be accounted for by considering the number of suits filed in the Village Munsiffs' Courts, as hardly any such suits would have been instituted in the ordinary Courts. They would have been settled otherwise. As above observed, the small proportion of such suits filed against agriculturists will, for the most part, be settled before the conciliator. It is only in cases by or against cultivators that, resort must be had in the first instance to the conciliator.

The rate of interest.

12. The rate of interest does not seem to have been affected. Those who can get advances get them on similar terms as before. Credit loans are still made on rates varying from 18 to 37½ per cent. and secured loans at half those rates. The enhanced risk to lenders has not operated to alter the rates sanctioned by immemorial custom. Instead of varying the rate at which they lend, the lenders are more cautious to whom they lend. It seems doubtful whether any opinion formed as to the extent to which the rayat's credit has suffered from variation in the rates of interest would be of much value.

Tagai.

13. In one of the debates in the Supreme Council regarding the Deccan rayats, it was alleged, as the true reason why they avoided applying for advances from Government for agricultural purposes, that the Sowkar would decline to lend to a client who had ventured to borrow from Government instead of going to him. The Act has removed this obstacle to applications for "tagai" by virtually debarring the poorer cultivators from obtaining loans from the money-lender. But other good and sufficient reasons to account for the paucity of "tagai" applications are easy enough to find. In the first place, District Officers are naturally reluctant to grant advances, for the punctual recovery of which they are, in theory, held personally responsible. There is no saying when the theory may be reduced to practice. Accordingly they demand from an applicant such security as he is generally quite unable to furnish. It is those who have little credit and who cannot find security who chiefly want "tagai." Their only security is their land and crops, and on these alone Government should make advances. Nor is it expedient to limit the application of the money too strictly. For instance, if R100 are lent for the purchase of a pair of bullocks, there need be no objection, as in fact there would be under existing rules to allow 25 per cent. of the sum to be expended on their maintenance. The stringency of such rules must be relaxed. The cultivators are most anxious to take "tagai," but they complain, with reason, of the delays resulting from formalities and minute enquiries preceding the grant. What they want is—prompt advances and on the spot. I have briefly touched on this subject, because it seems inevitable that, in the future, loans from Government must replace, to some extent, those formerly supplied by the Sowkar. It may even be worth considering, in the event of insuperable difficulties being encountered in starting agricultural banks, whether Government might not liquidate the ascertained liabilities of the Deccan rayats and recover the numerous sums advanced as "tagai."

Assessments.

14. Although this subject scarcely seems to fall within the scope of my work, still I should be wanting in my duty, were I not to inform Government of the very strong feeling that exists among all classes, official as well as non-official, that, under the recently revised settlements in parts of the four districts, the assessments have been enhanced beyond the

average capacity of the soil to bear them. It is commonly asserted by Europeans as well as Natives that uncertainty of settlement, high rates, and inequality of assessment and precariousness of profits, combine to deter capitalists from putting their money into the land. When the crops are good and prices are high, the cash payment is very light. But that the average produce will not bear the present rates has been dinned into my reluctant ears in every place I have visited throughout the four districts where the revised settlement has taken place. The rayat cannot comprehend why he should have to pay rent for land, which, though sown, has yielded him nothing. He does not object to pay the assessment on land from which a crop has actually been raised. This year in parts of the Nagar and Poona Districts much damage was done to the early crops by locusts, and in many cases both nstalments had to be paid out of the late crops. These, however good, were unable to bear the heavy drain.

Conciliation.

15. As has been so often pointed out, the real difficulty in working the conciliation scheme is to get competent men as conciliators. Many influential and respectable persons shrink from accepting the post, fearing that they will incur odium in the conduct of duties, to their minds unaccompanied either by honour or dignity, which might, in some measure, compensate for their irksome and honorary character. Individuals are more apt to stand apart nd interest themselves less in communal matters than formerly. The "Deshmukh," or mouthpiece of the community, whom every member of it looked to and heeded, is, in all but name, a thing of the past. Most of the existing conciliators are esteemed neither impartial nor independent. The majority themselves are probably indebted, and are therefore regarded by their fellow-debtors with distrust and suspicion, as partizans of the money-lender. Some few, on the contrary, are thought to be zealous champions of the rayat's cause, and are accordingly looked at askance by the Sowkar. Very few enjoy the confidence of both parties. According to the estimate entertained of the individual bias of the conciliator, creditor on debtor, as the case may be, is reluctant to come to terms before him. It is evident from the returns that some few conciliators are inundated with applications, while the majority get hardly any at all. Their individual popularity and efficiency may be gauged by this very convincing test In 1881 the conciliators of the four districts disposed of 69,500 applications. Thirty-four thousand certificates were granted to creditors. They cost only four annas each, and may be used with effect *in terrorem* against ignorant debtors. Only 14,000 settlements were affected. In more than half the cases the debtor failed to put in an appearance. The results are much the same for 1882. Of the disposals, 25 per cent. are applications not further prosecuted before the conciliator, but used as a means of inducing some private settlement. In the event of these means failing, the next step would be to try the effect of a certificate. The non-appearance of the debtor may, no doubt, often be traced to his distrust and misapprehension of the conciliation system generally. He naturally prefers the Court, to which he is accustomed, and in which he has full confidence, to enquire into and determine his liabilities But my enquiries lead me to doubt strongly whether in numerous cases the invitation of the conciliator reaches the debtor at all. It is supposed to be communicated to him through the Patel of his village, and, with that object in view, it is not unfrequently entrusted to the creditor himself. It is easy to foretell the result. At all events, the complaint of debtors that certificates are granted to creditors without their having been apprised of any application to the conciliator, is general. The conciliators urge that parties pay little attention to the invitation, which they are powerless to enforce, and that the debtor is usually the defaulter Except in redemption cases, the applicants are generally creditors. In redemption cases the defendant will seldom come to terms before the conciliator, because he prefers the delay consequent on proceedings in a suit, and the prolonged enjoyment of the land, to an immediate settlement. It is difficult to believe that the debtor would so often absent himself, if he were made duly aware of the summons. No doubt, after it has reached him, he is frequently persuaded not to attend by interested persons. It would seem as essential to the success of conciliative measures that both parties should be present before the conciliator, as that they should appear before the Court in a suit. I see no other effective means of attaining this end than by empowering conciliators to enforce attendance. The Legislature has not thought fit to arm them with this power. The best alternative seems to allow those conciliators, whose average quantity of work justifies the charge, the services of a peon, who might be employed to fetch the debtor or serve him with the summons. His statement as to service might be recorded in the proceedings before the Conciliator, or the summons might be served through the Revenue authorities. Another grievance of the conciliators is that they have neither

authority nor status to command the respect of the public. There seems no further remedy for this than has already been recommended and approved. If they were allowed to receive some small fee for their trouble—the fees being regulated according to a fixed scale—I think the office would become more popular, the work would be done more carefully, and better men induced to come forward. But neither honorary title nor petty establishment will secure for the conciliator that deference and local influence which must, after all, depend on his own character. The selections cannot be made with too much care and judgment. Far better to have no conciliator at all than one who is not to be trusted. In practice, it does not seem that they are much inconvenienced by the provisions of the law which compels them to hear witnesses brought by the parties to support their statements. The latter seldom offer such evidence. They usually present themselves merely in order to go through the required formality of clearing a way to the Court. On all sides I am assured that agreements, entered into before the conciliator, are almost always settled by the parties thereto beforehand. They are used as the binding and inexpensive substitute for a new bond. The creditor is satisfied to recover a part of his old debt even at a great sacrifice, while the debtor believes he has made a fair bargain, and is glad to keep on good terms with the creditor. The Sowkar says—"Why should we be at the expense of stamping and registering. If we come to an agreement before the conciliator, all this cost and trouble will be spared us." Dr. Pollen shows that the reductions effected in settlements by conciliators are as favourable to the debtor as if the business had been transacted by the Courts. Why then is there such strong unwillingness on the part of debtors to submit their cases to conciliation? The expense and trouble incident to conciliation proceedings are insignificant as compared with those in a regular suit. If the debtor has been duly summoned, and if he is aware that the treatment of his affairs will be no less equitable than if the Court were to deal with them, his indisposition to abide by the recommendations of the conciliator, or even to hear and consider them, is unintelligible. It follows, then, that in some cases he never receives the invitation at all; in others that the summons is served, and that he is persuaded to absent himself by the representations of interested persons, such as Sowkars, Vakils, and Pleaders; and in some others, that he distrusts the conciliator, and regards him as incapable of detecting claims fictitiously enhanced against him in anticipation of reduction. It has been suggested that the conciliator, when granting his certificate, should note on it through whose fault conciliation failed, and that the Judge should take this point into consideration when awarding costs in the subsequent suit, if any. Of course such a procedure could only be applicable in cases where both parties were present. But it would seem unsafe by tending to make agreements before conciliators more compulsory on those who want none of them. It would also, under the system as at present working, be altogether one-sided and in favour of creditors, who, for the reasons I have already recounted, are not usually the defaulters. If the Subordinate Judges were alone conciliators, the suggestion might perhaps be adopted without objection. As conciliators they are, as might be expected, more successful than their brethren. Where the parties are before the Subordinate Judge in his capacity of conciliator, he can generally prevail on them to come to terms, except perhaps in redemption cases. He commands the respect and confidence of both alike, besides enjoying superior facilities for securing their attendance. It seems probable that a continued decrease in litigation will, in a few years, give the Subordinate Judges more leisure to devote to conciliation, and that, if they be maintained at their present strength, they may be in a position to take upon themselves nearly all conciliation work. Their appointment as conciliators has been most popular. Moreover, by their success in conciliation, the number of suits that would come before them is *pro tanto* decreased, and they thus contribute to diminish the work of the Courts, while affording to the agricultural class the means of obtaining cheap and ready justice.

Village Munsifs.

16. As with conciliators so with Village Munsifs. The difficulty is to find competent persons who are also willing to undertake the work. No doubt plenty of suitable men can be found, but most of them are unwilling to take upon themselves the duties of the post. On the 1st January there were only 92 Munsifs in the four districts. The Collectors are making the necessary enquiries and preparing lists of names with a view to fresh appointments. I have therefore refrained, except in a few cases, from making suggestions on the subject, feeling that they would be quite out of place. Recommendations for nomination have been properly made through the local authorities, whose special knowledge could not be dispensed with. Generally speaking, agriculturists, for whose benefit the Act was intended, are unaffected by the establishment of these Courts. They are neither sued nor do they sue in them often. The costs, incident to such suits, though petty, the smallness of the instalments usually decreed,

and the long period over which they are made to extend, make it not worth the time and trouble, in most cases, of instituting them. I have failed to discover any indication that the effect of the Act has been to introduce a system of petty credit by agriculturists with shopkeepers for goods and necessaries which would otherwise have been bought in the open market at lower rates. If such were the case, suits against agriculturists in the courts of the Village Munsifs would be more frequent than they are. It is hardly necessary to add that the item of interest on the money obtained by borrowers to enable them to purchase in the open market at cheaper rates would probably more than counterbalance the advantage of lower prices. It seems that the contemplated extension of the Village Munsif system will place the Munsifs beyond all practical control. As Mr. West has already pointed out, their decisions are even now, though their number is so small, virtually arbitrary. If their number be augmented, the Special Judge should have wider powers of control over them which he might delegate to his subordinates. At present these petty courts are useful only in the large towns and places of business. Here too alone are suitable persons found ready to fill the post. To them, therefore, I think these courts should be restricted. It is certainly a matter of small consequence whether the nominations of those who have no work at all to do are cancelled or not. The office is honorary, and Government loses nothing by leaving the nominees undisturbed. But it is difficult to discern the object of retaining them. The appointment of Patels as Village Munsifs, unless they are of exceptional attainment and character, will be deprecated by any one who has observed how completely in nineteen cases out of twenty they are under the influence of their clerk, the Kulkarni. It seems clear that these courts will be resorted to only in the larger centres of business where they are not unpopular. As far as I can learn, whether they are abolished altogether or increased in number, is a matter of general indifference. Suits under ten rupees brought against agriculturists are, for the most part, settled before the conciliator, who is probably a man in whom the parties have more confidence than the Munsif. It would be simply waste of time and money to bring such matters before both these officers. This may account in some measure for the paucity of suits against agriculturists under ten rupees. The decrease is likely to continue as the Act becomes better understood. If the system be restricted to the larger places of trade, there would seem no objection to the extension of the jurisdiction of Village Munsifs to suits up to twenty rupees in value; otherwise I would deprecate any change. Conciliators in big towns will often readily take the Munsif's duties in addition to their own. To non-agriculturists this arrangement would be a convenient one, and the courts would be saved work.

17. To avoid the trouble and expense of registration, loans for small sums are not usually reduced to writing. They are lent on credit, without any acknowledgment from the borrower, when the lender thinks he can trust him. If the Sowkar be at all doubtful of his man, he insists even yet upon a bond, the expense attending the registration of which falls on the debtor, and is deducted from the sum advanced. The formalities of execution and registration greatly impress the ignorant debtor, and the lender makes the most of his doubts and fears. The system of registration circles and stipendiary Registrars is popular, and is a great improvement on the villagewar system. There is still, however, room for further improvement. The class of men filling the post of Circle Registrar should be raised. It is a position of responsibility and trust, and I am unable to say that those Registrars I have met and conversed with seem equal to it. To get better men, the pay must be raised, and grades instituted, as an incentive to integrity and industry. As regards agriculturists, the work of the Registrars seems mostly in connection with transactions other than securities for debt. The tendency is for registration work still more to diminish. As the knowledge of the Act spreads, transactions will naturally be still further restricted, and credit, where it prevails, still further usurp the place of bonds. I believe this tendency will be still further accelerated by the change for village to circle registration. Registration of documents for small sums has become more inconvenient and expensive to the borrower. He has to defray the charges of lender and witnesses to attend, perhaps more than once, at the Registrar's Office, which may be several miles away. It seems probable that expenditure in connection with circle registration will prove greatly in excess of income even during the current year. Should it hereafter be found that the circle system of any locality is unable to pay its expenses, and that the Registrar has not sufficient work to occupy his time and justify the continuance of his salary, it may become worth consideration whether the Sub-Registrar of the Taluka with an assistant might not, by visiting periodically, say once a week, the head-quarters of the circle, perform the duties before intrusted to the Circle Registrar. The services of the latter could then be dispensed with altogether. The amendment of the definition of the term "agriculturist" must be productive of a great decrease in registration. The former wide interpretation of the term

Registration.

was a serious embarrassment to trade. The Sowkars were unable to enforce their unregistered bonds against persons who had suddenly become agriculturists, and specially protected by the law. It does not seem that the rayats experience any very great general inconvenience from the provisions of the law relating to registration. No doubt, it is troublesome to many that a mere temporary loan for a petty sum, advanced on the acknowledgment of the borrower in the lender's ledger, must be registered. A man sees a bullock in the bazar which just suits his need or fancy, and straightway goes to the village Sowkar to raise the money wherewith to purchase it. Unless he has exceptionally good credit, the Sowkar will decline to lend unless the transaction is registered. The Registrar's Office is some miles distant; the opportunity slips away, and so favourable a one may not occur again. Such cases may very likely occur. But the security against fraud provided by registration more than compensates for such occasional inconveniences, and intelligent rayats fully appreciate and approve of registration in all cases, and are willing to pay the small expenses attending it. If bonds for small sums were exempted from registration, as has been proposed, the result would be that loans would be distributed over the number of documents necessary to bring each within the exemption. Under the ordinary law of registration, documents relating to immoveable property under R100 in value need not be registered. To avoid the cost, the expedient of expressing the entire sum advanced in separate documents, each under R100 in amount, is or was common.

Insolvency.

18. It is a matter of surprise that more advantage has not been taken by debtors of the insolvency clauses of the Act. It does not seem that the disinclination is based, to any great extent, on religious scruples, or that it proceeds from a natural distaste on the part of debtors to any active attempt to free themselves. It was supposed that the rayat might not object to be declared insolvent, though he avoided moving in the matter himself. But the Courts are fully empowered, on their own motion, to declare a man insolvent, though their practice is to abstain from using their authority without the debtor's consent. The latter's real objection is to the social branding, the entire loss of his remaining shreds of credit, which must follow on insolvency. I am assured that a poor but honest man would blush to present himself before his small society a declared bankrupt. He would feel constrained to abandon his home and seek his living elsewhere. Instances have occurred in which the Subordinate Judge, desirous of bringing this part of the law into practice, has signified his intention to the debtor of declaring him insolvent. The latter far from appreciating the benefits to him of insolvency, has implored, with tears, that he may be spared the indignity. Even in the few cases where the Judge's exhortation has induced the debtor to consent, the latter, after leaving the court, has usually reconsidered his resolve, and by failing to present his petition with a list of goods and chattels annexed, has rendered further proceedings impossible. He will hardly be expected to incur costs for the attainment of an object which he regards as in every way detrimental to him. The feeling in the mofussil at present is strong against insolvency nor are there any indications that it is abating. To enforce this part of the law contrary to the will of the debtors would render the courts unpopular, and furnish new means of terrorism and exaction to the unscrupulous creditor. In large and busy towns, the sentiment is naturally much weaker. People are more apt to mind their own affairs than to trouble themselves about those of their neighbours. The individual and his conduct are lost in the surrounding multitude. It is true that the real meaning and effect of insolvency is very imperfectly understood, and that prejudices and misconceptions on the part of ignorant persons will surely be fostered and encouraged by interested parties. As a matter of fact, few cultivators can be found whose aggregate debts do not exceed fifty rupees. Moreover, the rayat fails to perceive the benefit of becoming insolvent by process of law. His debts are in excess of his means to discharge them. Practically the law protects him from the obligation of meeting his liabilities. He therefore really enjoys all the advantages of a state of insolvency, and he is naturally averse to add to his already painful position the public stigma of dishonour. He has no longer any reason to fear his creditor. In England, I believe, labourers, who live from hand to mouth on their daily wages, seldom resort to the bankruptcy courts; not because they have any sentimental objection to bankruptcy, but because the act of bankruptcy does nothing at all to improve their condition.

Management by the Collector under Sections 22 and 29.

19. With the assistance of the Special Judge, and after consulting the Collectors concerned, I have framed a set of rules for the guidance of Collectors in managing debtors and insolvents' estates, which it has been my endeavour to render as simple and workable as possible (see Appendix I). Without experience to show in what direction rules are really required,

to hope that these will meet all the difficulties that may arise hereafter in practice would be to expect a shoe to fit, irrespective of the dimensions of the foot for which it is intended. Dr. Pollen is still of opinion that rules are not needed, and points out that the Collector has plenary power over the estate to manage it in the mode that may to him seem most profitable. I am not aware of the existence of rules for the management of minors' estates, or of inams temporarily under attachment. The Collector wants no other guidance save his own good judgment, backed by a full and unfettered control over the estate. The demand for rules, originating with Mamlatdars, is a very natural shift to avoid an irksome addition to duties already excessive. The Collector feels that he is unable satisfactorily to conduct the management of portions of petty holdings scattered over his district. They cannot be directly managed by him.. He has no funds in hand out of which to start cultivation. As Mr. West points out, losses may occur, and who is to bear them? Debtors, with a surplus estate beyond their real necessities, seldom figure in the court at all. If a decree be passed against them, they will satisfy it, without permitting the creditor to apply to the court. Judgment-debtors, therefore, to whom Section 22 will be applicable, are either dishonest persons who seek to avoid payment of debts which they have the means of discharging or, as in the vast majority of cases, persons reduced to virtual insolvency, after having tried every means to avert the evil day by selling or mortgaging their best land, and retaining only the worst to supply their bare food necessities. As Section 22 was intended as the chief, if not the sole, compensatory provision in the law to the creditor, who has lost so much by it, and as great importance is justly attached to a fair trial of this section, I have taken peculiar pains to endeavour to discover whether and how it is workable, and, if not, the real reasons of its failure. In so far as I am aware, there are no instances of creditors, the persons most interested in the success of the measure, applying to the courts to enforce it. Some of the Judges have expressed doubts as to whether the law authorizes them under Section 22 to act on their own motion. The few references, however, that have been made to the Collector—only four I believe in all—have been made by the courts spontaneously. It is evident, therefore, that the creditors—very shrewd as a class where their pecuniary interest is concerned—fail to see how the proposed management will benefit them. From the Judges and Collectors whom I have personally consulted on the subject downwards I have not heard one single opinion in favour of the measure, nor gathered a hint as to how it is to be made practicable. The idea is that the Collector, on receipt of a reference from the court under Section 22, after providing a sufficiency for the support of the debtor and his family dependent on him, should lease out the surplus and for seven years at a rental which will cover the assessment and leave something over for the creditor. If he can obtain a premium in addition to the rental, so much the better for the creditor. Direct management by the Collector or his delegate is not contemplated by the rules. Although this has been enumerated as one of the possible forms of management, it is obviously in practice out of the question for reasons, among others, already referred to. The usual mode of management must be by letting, and that generally to the debtor himself. From the wording of Section 22, by which "the court directs the Collector to take possession of property of the debtor to the possession of which he is entitled," it would seem that the investigation into the debtor's title to possession was intended to be made by the court, which is bound to satisfy itself on this point before making the order. The Collector's duty will simply be to take possession of property specified by the court in the first instance. Persons putting forth adverse claims to possession are to be referred to the court. A special Rule (12) has been inserted to meet this case, which seems likely often to arise. In Rule 13 I have designedly omitted clause (*b*) of Section 322A of the Civil Procedure Code, which refers to enquiries by the Collector into claims on the land other than those arising from money decrees. The Collector's principal difficulty will be to determine the quantity of land necessary for the debtor's subsistence. This must vary in every individual instance, and it would be inexpedient by any attempt to frame rules to limit the Collector's discretion. He will judge each case on its own merits. Rule 5 merely indicates the kind of considerations which should assist him in coming to a correct opinion. Land, which might be disposed of advantageously by the Collector, is frequently in the nominal possession of the creditor and cultivated by the debtor as his tenant. What the former wants is that his mortgage should be turned into a transfer out and out. In actual possession of the land he can make more out of it than by trusting to the Collector's management. I suppose the provisions of Sections 320 to 323 of the Civil Procedure Code were framed with an object similar to that embraced by Section 22 of Act XVII of 1879. The intent of the Legislature in both cases is to avoid the sale of the land of agriculturist debtors, except in the last resort

after all other attempts to liquidate or arrange for the settlement of his liabilities have failed. But I understand that, ultimately, sale of the land is almost invariably the result of references for execution of decrees by the Collector under the former law. The Collector's special connection with the land, and his local knowledge and influence, give him peculiar opportunities of arranging for the payment of debt for which land is the security, without selling it. But for all results in accordance with the intentions of the Legislature, the land might have been at once sold under usual process of the court, and the delay, so much deprecated by creditors, avoided. Under the rules there is nothing to prevent the creditor taking the ascertained surplus portion of the debtor's property into his possession, and making what he can out of it during the seven years to which the management is limited. I am not sanguine that Section 22 will ever be worked to any great extent under existing conditions, and it is clear that up to the present the intended compensation to creditors has proved purely imaginary. I would suggest that the rules be refirred to the Legal Remembrancer for his opinion.

Subordinate courts.

20. I have made the acquaintance of many of the Subordinate Judges during my tour who, as a rule, appear deservedly to enjoy the confidence and respect of suitors and of the public. It seems that they have worked the Act with marked zeal and ability, and its further administration can hardly be left in better hands. After existing arrears have once been overtaken, there is every reason to suppose that they will find no difficulty in keeping pace with the work. After the settlements of old transactions has once been completed, the duties of the courts must become comparatively light and easy. What time will be necessary to effect this I am not in a position to estimate. The decrease in the number of appeals has rendered the work of the District Judge relatively light in the four districts affected by the Act With an efficient Native assistant it would seem possible for him to undertake the duties now performed by the Special Judge and his assistants at no very distant date. The Subordinate Judges can be trusted to carry out the provisions of the Act with intelligence and impartiality, and it seems that a much less minute supervision over their proceedings than that exercised by the special establishment would suffice, now that the novelty of the law has, in some degree, abated, and its principles are fairly understood. No doubt a careful supervision must be exercised over the work of conciliators; but, as I have before observed, I hope to see the Subordinate Judges themselves undertake the greater portion of conciliation work, or, at all events, have enough leisure to superintend it efficiently. To hand over the control of conciliation to the Revenue authorities would seem a fatal step. Their duties are already too heavy and too multifarious. It is impossible that they could find leisure for the careful and laborious scrutiny which conciliation cases demand, if the conciliators are to be kept up to the mark. It is gratifying to learn that the hard-and-fast circuit system has at length been modified. In carrying out orders directing attendance at fixed times and places, the Subordinate Judges unnecessarily expended much valuable time and energy. The course that commends itself most to reason would seem for the Judges themselves to determine when and where their courts should be held according to the convenience of business as shown by their file of suits.

Costs in suits.

21. A great number of agriculturists are still deterred from filing account and redemption suits by fear of the difficulties of procedure, and of their inability to meet the costs. In Satara last year the number of redemption suits exceeded that of the other three districts together. The fact can only be attributed to superior means, and not to superior intelligence. The charges about which the suitors chiefly complain are those incurred in paying "bhatta" to witnesses. I hear that it is the practice of the courts to compel the attendance of all the witnesses on both sides at every hearing or adjourned hearing. When the hearings happen to be numerous, the charges for witnesses are proportionally heavy. Parties may avoid summoning witnesses, and agree to present them without the courts' aid. But all the same, the witnesses have to be paid for their trouble. So that the estimated costs are often less than the actual costs. Of course, if suits were ordinarily disposed of at the first hearing, the procedure referred to above would be unobjectionable. But such is unfortunately seldom the case. It seems that the court might be able to form some fairly accurate opinion on the probability or otherwise of one hearing sufficing for the disposal of the suit, and, if in its judgment, more hearings than one would be necessary, it might avoid summoning defendant's witnesses till those on the plaintiff's side had been examined and done with. I know the difficulties that

beset this subject, and I feel that any suggestion by me may be crude and impracticable. I merely point out one of the chief obstacles to the extension of cheap justice designed by the Relief Act. It is most desirable, if possible, to supplement the sacrifices so liberally made by Government in the matter of court-fees and stamp expenses by some measures directed to reduce the present charges on account of witnesses. The average costs in suits are high still, higher even than they were last year.

Consent cases.

22. The jurisdiction of the Subordinate Judges of the second class may be extended to suits under Chapter II of over ₨100 and below ₨500 in value, where both parties agree. The creditors usually demur, and the reason given is that they object to lose their right of appeal. But why do they prefer an appeal to the District Judge to revision by the Special Judge? The truth is, they are inclined to believe that the latter being more specially identified with the Act, which was passed for the relief of *debtors*, is apt to take a view less favourable to them as creditors than the District Judge, whom they regard as holding a more neutral and independent position, and as more likely to form an unbiassed judgment on the merits of each case. Of course this is a strange misconception, but one to which they obstinately adhere.

Concluding remarks.

23. The Act may be said to have accomplished its object, namely, the relief of the indebted rayats of the Deccan, and this at the expense of the money-lenders; the special law being no less unfavourable to their claims than the ordinary law was unduly favourable to them. The order of things existing previous to the introduction of the Relief Act has been, in fact, inverted. Debtors are comforted, and creditors are tormented. Nine-tenths of the rural population are so circumstanced that they must have advances from time to time. To some extent the necessity for incurring fresh debts arises from the burden of old ones, the accumulated interest on which annually absorbs the greater portion of the profits of the soil. By protecting the land and virtually its produce from attachment and sale for debt, the Act tends to diminish this necessity. The greater the value of the property protected the greater the benefit to its owner. Accordingly, the better class of cultivators has derived far more advantage from the working of the Act than the poorer. Owing to a run of fair seasons since its introduction, they have experienced in a less degree the inconvenience arising from inability to get loans with the former facility. In the Deccan generally, the seasons during the last three years have been comparatively good. This, coupled with the circumstance that the rayats have been able to retain and enjoy the produce of their land, instead of handing over the greater portion of it in part-payment of ever increasing and never liquidated debts, has tended to obviate any very pressing need for the Sowkar's help. But the well-to-do cultivator can still borrow either on credit or by mortgaging his land, while the poorer rayat is reduced to the alternative of resigning his field altogether or of foregoing the customary loan. That sales of land have not been unusually numerous must be ascribed to the succession of good seasons, low prices, available means of support apart from agriculture. Should these favourable conditions suffer a relapse, the land of the inferior class of cultivators must go. The money-lender can and will accept no other form of security. The only remedy will be for Government to step in, and, recognising the inevitable and imperative necessities of the case, assist its tenants, by timely and liberal aid, to tide over the difficulties. The rayats, while grateful for their release from the clutches of the Sowkar, naturally look to Government to replace him when the evil day shall arrive. It may be reasonably hoped that, as their circumstances improve and accumulations increase, their need for extraneous aid will diminish. For the present, however, it is indispensable, and it will be for Government to decide what form it shall take. The establishment of communal banks with local agents would seem likely to effect all that is requisite in this direction. But pending their introduction, which is a matter of time and apparently some difficulty, the only course open seems to be—a revised system of "tagai" advances. That professional money-lenders will altogether cease their transactions with agriculturists need scarcely be apprehended, seeing that the one class is as nearly interested as the other in preserving their mutual relations. Indications are not wanting of the readiness of prosperous cultivators, in part, to take their place. But further time is required to establish confidence in the stability of the law, and a more widespread knowledge of its provisions. Meanwhile, loans to agriculturists have greatly diminished in number and amount. That this would be the certain result of the Act was anticipated, and is in no way a subject for regret. Credit has been brought within its proper and natural limits. Litigation has decreased owing to difficulties experienced

by the creditor in recovering debts, justly due, from a favoured class. A feeling of perturbation and uncertainty pervades the money-lending classes due to the frequent, and to them, adverse, changes in the law, and to the novelty of many of its provisions. On the other hand, the effect of the Relief Act has been to inspire in the rayats a feeling of hope and security, to which they have long been strangers. Time can alone show whether this feeling of security, that the fruits of his labour will remain with the labourer, will supply an increased incentive to exertion, resulting in improved tillage and higher profits from agriculture. Unless the Deccan peasantry is different from any other peasantry in the world, such would appear to be the natural effect. That the cultivators of the Deccan, as a class, can, under present adverse conditions of soil and climate, ever become prosperous and independent is not to be expected. To be indebted is incident to their lot. But debt in itself is not necessarily a bad thing. Hopeless indebtedness, not debt, is the evil which the Relief Act seeks to avert. In this regard its success can hardly be questioned. Settlement of debts by the Courts by conciliation and privately is rapidly proceeding. At the present rate of progress it may be fairly anticipated that a settlement of all existing liabilities will have been arrived at not many years hence. The actual liquidation must extend over a much longer period, and in numerous cases, owing to poverty and dishonesty of debtors, cannot take place at all. It seems then clear that as a real and large measure of relief to the rayats, and as a method of equitably compensating lenders, who are entitled to some return for the losses they have sustained under the operation of the Act, the general liquidation of the debts of the cultivators by Government is the great desideratum. But it would seem inexpedient to hurry on such a scheme. As I have above observed, the settlement of what is due from debtors to creditors is progressing rapidly and smoothly. When that is completed, the details of liquidation will have become comparatively easy to adjust. I believe that any settlement, made by a Commission specially appointed for the purpose, would be more hurried, less searching and thorough, and less satisfactory in many ways. The Commission might enter on its work of compromise and payment in cash, after the sum of such payments had been ascertained and determined independently, by the machinery now in force. It is not that I attach much weight to the notion, that if the settlement be effected by a Commission, there will be risk of collusion between creditors and debtors with the object of fictitiously enhancing the demands of the former; since a little reflection shows that the sufferer by such collusion must be after all the debtor himself. Should the institution of agricultural banks be found impracticable, the liquidation might perhaps be effected by Government advances on the security of the debtors' land and crops recoverable as ordinary "tagai" advances. By enforcing prudence in borrowing and lending, by making expenditure according to means compulsory, and by inculcating the positive necessity of thrift and saving, the tendency of the Act has been most salutary. Had its effect been to instil these useful lessons only, it must still be regarded as beneficial. Of course the Act can be considered only as a partial measure of relief. It was never intended, as some would appear to suppose, as a panacea for the woes of the rayat. It deals with only one form of them. To render the measure of relief round and complete, the good results of the Act must be supplemented and extended by (i) liquidation of old debts; (ii) liberal advances to cultivators on the security of their land and crops alone; (iii) light assessments, regulated according to the actual yield of the land; and (iv) cheaper and prompter justice. It is the opinion of many experienced and impartial Native gentlemen whom I have consulted on the subject that, ten years hence, should the Act continue in force, a striking change for the better will be apparent in the material condition of the people. Europeans, official and non-official, are less sanguine. Any forecast of this nature must, to be of real value, take into account the seasons and the means of tiding over the bad ones. As I have several times remarked, the Act has been chiefly beneficial to the more intelligent and prosperous cultivator, while the condition of the poorer and more ignorant rayat remains pretty much unaltered. The former has something worth protecting, and is beginning to exercise foresight and economy in his expenditure, while the status of the latter is little removed from that of the day-labourer living from hand to mouth. I would gladly see the Act extended to the other districts of the Deccan, and even to the entire Presidency—at least those portions of it which provide for a judical enquiry into the history of debts, the redemption of mortgaged land, and proceedings before a conciliator precedent to the institution of a suit. Moreover, I hope to see the day when the restriction of these privileges to agriculturists alone will cease.

24. In Appendix II to this report, I have given a list of subjects, periodical returns concerning which would seem to supply an answer to the points raised in paragraph 3 of the Secretary of State's Despatch No. 2 of 26th January 1882 regarding the working of the Act.

APPENDIX I.

Rules under Sections 22 and 29 of Act XVII of 1879.

1. The Court when directing the Collector to take possession of property under these sections shall, together with the order, send— No. 148.

(*a*) A copy of the decree.

(*b*) A copy of the judgment of the Court, whether original or appellate, which passed the decree.

(*c*) A statement showing the extent, if any, to which the decree has already been executed and clearly setting forth what portion of the decree still remains to be satisfied.

2. The aforesaid documents shall be prepared and sent to the Collector free of all cost to the parties, the copies, etc., being made by the Court's establishment.

3. On receipt of the documents mentioned in Rule 1, the Collector may either himself proceed to execute the Court's order, or may refer it, for disposal, subject to his supervision and control, to any of his subordinates not lower in rank than a Mahalkari.

4. The Collector or other officer to whom he so refers the Court's order, after appointing a day for hearing any representations, which the parties to the decree may desire to make, and causing a written notice to be served on each of them on the day so fixed, shall proceed to hold a summary enquiry, and to determine what portion of the said property is required for the support of the judgment-debtor and of his family dependent on him, and may from time to time adjourn such enquiry. The Collector's decision as to what portion of the property so required shall be final.

5. In determining such portion the Collector or other officer aforesaid shall take into consideration the capabilities of the soil, the market prices of produce, the rate of assessment, the social position and general circumstances of the debtor, and the number of the members of his family dependent on him.

6. The Collector or other officer aforesaid setting aside the portion of the property determined under Rule 4 as required for the support of the debtor and his family shall take possession of the residue of such property; and shall notify that he has done so by written order to the parties, and by proclamation on or near the property in such manner as he may deem most suitable.

7. The Collector or other officer aforesaid shall then make and similarly publish the necessary order in writing under Section 73A of Act XXII of 1882 amending Act XVII of 1879, with respect to the portion of the said property reserved for the support of the debtor and his family.

8. The Collector or other officer aforesaid may from time to time require by written notice the attendance of the parties to the decree in order to ascertain their wishes, or to obtain information that he may consider necessary to enable him to provide satisfactorily for the execution of the Court's order; and, if any party fail to attend in pursuance of such notice, the Collector or other officer aforesaid may decide the matter in his absence, and he shall not be entitled to be heard afterwards with respect thereto.

9. Every such notice may be served in the manner in which notices issued by the Collector as such are usually served, or by forwarding the same to the Court to be served upon the pleader, if any, of the party to whom such notice is addressed.

10. If the property of which the Collector or other officer aforesaid has taken possession is in the occupation of tenants paying rent or a share of the produce to the judgment-debtor, he shall issue written notices to such tenants directing them to pay such rent or share to him during the currency of the term of tenancy, if any, and such notice shall be sufficient authority to them to make such payments. If there be no tenant in possession, or on the expiration of the term of tenancy, if any, the Collector or other officer aforesaid may let, in lots or otherwise, for a term not exceeding the seven years to which his management extends on payment of a premium, the whole or any part of the said property to the highest bidder; or may let on farm or manage by himself or another, the whole or any part of such property for any term not exceeding seven years from the date of the Court's order or may adopt partly one of such modes and partly another or others of such modes as in his discretion he may deem most convenient and profitable.

11. The Collector or other officer aforesaid may let or dispose of the property in any of the ways specified in the foregoing rule, either to the judgment-debtor himself or to the decree-holder or to a third party as may appear most convenient and beneficial to the parties to the decree.

12. If any dispute arise by reason of any person or persons claiming to be in possession of such property or any part thereof adversely to the judgment-debtor, the Collector or other officer aforesaid shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order, and shall, pending the reference, stay proceedings relating to the subject thereof.

13. Generally, as regards the management of such property, the keeping and rendering accounts, the application of the funds realized by him, and the securing the attendance of parties and witnesses and production of documents, the Collector or other officer aforesaid shall be guided by the provisions of Sections 322A (omitting clause B) to 325C of the Civil Procedure Code, in so far as the said provisions are applicable to management limited to a period of seven years.

14. On the expiration of the letting or management and the disposal of all monies which have come into his hands, under the provisions of Section 324A of the Civil Procedure Code, the Collector shall re-transmit the papers received by him under Rule I, together with the execution proceedings, to the Court by post or in such manner as may be most convenient.

H. WOODWARD,
Special Officer.

Remarks by the Collector of Sholapur.

"In the opinion of the undersigned, the rules appear to be suitable."

Remarks by the Collector of Ahmednagar.

"The undersigned approves of the rules drafted by the special officer, but would omit from Rule 12 the words 'and his own opinion thereon.'

2. "Revenue officers have generally enough work of their own to do, so that the question as to who is in the right, the judgment-creditor or the person claiming to be in possession of property adversely to him, might well be left to the Civil Courts to find out.

3. "It would apparently be sufficient were the provisions of the present Civil Procedure Code followed."

Remarks by the Collector of Poona.

2. "The Court's original order should not, in the opinion of the undersigned, be issued until it has been decided by the Court in the first instance, that the property belongs to the debtor and no one else.

3. "If within the seven years of management allowed there appears no probability of the full and final execution of the Court's decree, the undersigned begs to propose that the decree should at once be returned to the Civil Court.

4. "The undersigned agrees with the Collector of Ahmednagar that the words 'and his own opinion thereon' occurring in Rule 12 should, for the reasons stated by that officer, be omitted.

5. "The words 'payment of premium' in paragraph 10 of the Draft Rules are not, the undersigned thinks, sufficiently clear. Do they mean payment in advance of the whole amount decreed? If so, it should be so stated."

Remarks by the Collector of Satara.

"I have no objection to the above rules as amended by the Collectors of Poona and Ahmednagar."

Remarks by the Special Judge.

"I approve generally of the rules as they stand; they will serve as a basis for the Collectors to go upon at first; but experience alone will show what rules are really necessary. I think that the rules should be submitted for the approval of the Legal Remembrancer before they are issued by Government."

Note by the Special Officer.

The omission of the words "and his own opinion thereon" from Rule 12 as suggested by the Collectors of Ahmednagar, Poona, and Satara, seems unadvisable. The opinion of the Collector, which he has special opportunities of forming, will be most valuable in guiding the Court, with which the final decision as to possession rests. Nor, ordinarily, would it entail much extra labour to record such opinion.

2. The Collector of Poona seems, from paragraphs 3 and 5 of his remarks, to misapprehend the true scope of Section 22. That provision extends to a management limited to seven years only within which term, if the decree cannot be satisfied in full, the debtor will be released from further liability, and his land will be restored to him free from encumbrance. The duty of the manager is merely to make as much out of the surplus property for the benefit of the creditor as he can during his term of management. Under the corresponding Sections 320, 321, etc., of the Code of Civil Procedure, the debtor's estate must be sold by the Collector unless, by some other deposition, he can satisfy out of it the decree in full. It does not, therefore, appear that any change in the rules is required. On this point they appear free from ambiguity.

H. WOODWARD,
Special Officer.

APPENDIX II.

As to the allegation that the creditor of an agriculturist is not able to recover a debt justly due:— No. 148

Statements showing—

1. Number of suits filed against agriculturists.
2. Number of decrees executed against agriculturists.—
   - (i) Their aggregate sum.
   - (ii) Amount recovered under them.
3. Number of applications for execution struck off owing to creditor's failure to proceed.
4. Number of decrees on the file of the Courts for execution of which no applications have been received.
5. Number of decrees for sale of land sent to Collector for execution under Section 320, Civil Procedure Code.—
   - (i) Number of such decrees in arrear.
   - (ii) Average time between receipt and execution of such decrees.

As to the allegation that an entire stop has been put to agricultural loans:—

Statements showing—

1. Receipts from License Tax.
2. Receipts from General Stamps.
3. Number of deeds of sale of immoveable property, mortgages, leases, and money-bonds under Section 56 of Act XVII of 1879—
   - (i) Between professional money-lenders and cultivators.
   - (ii) Between cultivators and cultivators.

As to the allegation that the Deccan rayat cannot get on without borrowing:—

1. Statistical statements (Village Form 13).
2. Returns of waste and cultivated land—
   - (1) Number of transfers and resignations.
3. Land in occupancies unsown (Village Form 16).
4. Statement showing how Government assessment was recovered, *i.e.*, voluntarily paid or by compulsion.

H. WOODWARD,
Special Officer.

From C. G. W. MACPHERSON, Esq., C.I.E., Under Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India,—No. 4850, dated Bombay Castle, the 7th July 1884. No.

I am directed to forward to you, for submission to the Government of India, copy of a Despatch* No. 9, dated the 24th ultimo, addressed by this Government to Her Majesty's Secretary of State for India, in reply to His Lordship's despatch No. 2* of the 26th January

* Printed together below.

1882, on the subject of the working of the Deccan Agriculturists' Relief Act, 1879. Copies of the collection of papers and of the minutes referred to in the despatch also accompany.

2. In forwarding the despatch, I am directed to invite attention to the last clause of paragraph 7 thereof and to the Honourable Mr. Justice West's observations at the beginning of page 170* of the collection, and, with reference thereto, I am desired to request that the Government of India may be moved to sanction the remission, in the first instance, of three-fourths of the court-fee in all suits brought before the Subordinate Judges as Conciliators in the twelve talukas named below in the Districts of Poona, Ahmednagar, Sholapur, and Satara:—

Taluka.	*District.*
Khed	Poona.
Akola	Ahmednagar.
Parner	Ahmednagar.
Sangamner	Ahmednagar.
Jamkhed	Ahmednagar.
Karjat	Ahmednagar.
Sangola	Sholapur.
Malsiras	Sholapur.
Patan	Satara.
Khanapur	Satara.
Man	Satara.
Jaoli	Satara.

I am to explain that, since the date of the despatch, it has been thought desirable to introduce the system referred to into twelve instead of eleven talukas.

From the Right Honourable Lord HARTINGTON, Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the GOVERNOR in Council, Bombay,—No. 2 (Judicial), dated India Office, London, the 26th January 1882. No. 15

I have in my Despatch No. 15, dated the 30th of November last, replied to your letter No. 15† of 20th September, as regards the question of the publication by Mr. Justice West, of his criticisms of the Deccan Agriculturists' Relief Act, 1879.

† Not printed.

2. I consider it, however, advisable to make some observations on the general and very important question raised in Mr. West's minute, that of the practical results effected by the Act in the four districts to which it applies.

3. The objections which Mr. West makes to the Act are briefly these:—

(1) That in consequence of the errors which he alleges to exist in it, a creditor of an agriculturist cannot recover a debt justly due.

(2) That therefore an almost entire stop has been put to agricultural loans.

(3) That the ryot of the Deccan cannot get on without borrowing.

(4) And hence that the effect of the Act will be to injure both the monied classes and the peasantry.

4. Nothing has been yet brought to my notice which would lead me to support these views. On the contrary, Mr. Pollen's reply to Mr. West affords strong grounds for presumption the other way, and it would rather appear that the facts which Mr. West cites are not sufficient to support his conclusions. Thus, he founds his argument on point 1 above, upon an alleged decrease of litigation, which he endeavours to prove by comparing the number of suits brought in the Civil Courts before and after the passing of the Act, but he omits the cases which, under the Act, are brought before conciliators and village munsifs, which clearly ought to be taken into account. Again, his assertion that a creditor has little chance of recovering a just claim, appears to be at variance with the returns of the disposal of the cases which have come into Court. These indicate that of every 14 cases the plaintiff, who is of course usually the creditor, gains eight entirely and three in part, and loses three. This, though it is, in my opinion, a great improvement on the old state of things, when, as was shown by the Deccan Ryots Commission, a debtor had practically little chance of being successful in a defence, however strong, certainly does not show that a plaintiff with a just claim cannot obtain a decree.

5. But at the same time it must be remembered that the Act of 1879 was an experimental measure, and one of an exceptional character, and that its operation should, therefore,

* Printed at page 195 of this collection.

be closely and carefully watched. Mr. West's strictures upon the principles and details of the Act derive weight from his position and ability, and it would appear that his views are supported by a considerable body of public opinion in your Presidency.

6. While, therefore, I consider it by no means advisable to concede Mr. West's demand for a formal inquiry into the working of the Act, I think it would be well that you should, at least for some time to come, observe more closely the working of the Act than is necessary in the case of laws of a less exceptional character, or than, I gather from the 6th paragraph of your letter* of 20th September last, you at present propose to do.

* No. 15, Judicial.

7. With this end, I have to ask your attention to the following observations.

8. First, with reference to the details of the Act (as distinguished from its general principles) criticised by Mr. West and others.

9. The most important among these details is that of the system of conciliation. While you are satisfied that the working of this system has hitherto not been unsatisfactory,† I observe that Mr. Pollen, as well as Mr. West, expresses an unfavourable opinion of the competence of many of the conciliators, and consequently of the substantial justice of the settlements they effect.

† Resolution, Judicial Department, No. 2467 of 16th April 1881, paragraphs 14 and 15.

10. The Despatches marginally noted,‡ you will remember, suggested the adoption of the French system of conciliation. This was objected to by the Governments of Bombay and of India, on the ground that "the combination of functions" of Judge and conciliator "might lead to confusion and to abuse of authority"; but it was proposed to try it in the case of a few selected Judges. The Despatch to the Government of India, No. 31, Legislative, of 1880, approved this proposal and expressed a hope that the experiment might be successful, and that it might be tried on a large scale. It now appears§ that a number of Sub-Judges have been appointed conciliators under the Act, but that the experiment has not yet been working long enough to enable Mr. Pollen to pronounce on its success. I observe that Mr. West is decidedly in favour of the French system, and does not apprehend the evils which the Government of your predecessor expected to result from it. I desire that you will call on Mr. Pollen to state his opinion on the success of the experiment as soon as he has had sufficient experience of it to enable him to form one, and will then report to me whether the result has modified your views unfavourable to the French system.

‡ To Bombay, No. 4, Legislative, of 1878, paragraphs 28 and 30.
To India, No. 4, Legislative, of 1880.

§ Paragraph 36 of Mr. Pollen's Report, No. 255 of 1881.

11. As soon as you feel yourself in a position to do so, after such inquiry as you may deem necessary, I request that you will state to me your matured views on several of the other details of the Act which Mr. West criticises, and especially those regarding which Mr. Pollen is not altogether satisfied, such as the provisions relating to registration, and to the management by the Collector of a judgment-debtor's land.

12. Secondly, as regards the general principles and the operation of the Act, I desire that you will, as soon as you have had sufficient additional experience of the working of the Act to enable you to do so with confidence, communicate to me your definite opinion *seriatim* on the different points of Mr. West's objections to the Act, as specified in paragraph 3 of this Despatch.

13. You should direct Mr. Pollen (with whose performance of his important duties, I am glad to observe that you are fully satisfied) to notice particularly, in his annual reports, matters which bear on the first allegation, that under the Act, suitors do not get justice, *e.g.*, money suits (*a*) against agriculturists; (*b*) against non-agriculturists, what proportion of such suits are contested, in what proportion is the defendant wholly and partially successful in his defence, and the Special Judge's opinion as to the general honesty of the claims and of the defences; suits for an account, do they show that the ryot is being cheated in his transactions? conciliation cases; what is the impression of the Special Judge as to the general effect of agreements and compromises; is it or is it not to reduce exorbitant claims within just limits; and many other similar points?

Section III W of the Act.

Section III A.

14. In case you conclude that Mr. West is correct in his second allegation, and that agricultural loans have been greatly diminished, you should pay particular attention to the third allegation. The question will then arise whether or not the general body of agriculturists

can get on without borrowing. If they cannot, there will have been difficulty in realising the revenue, and a great deal of land will probably have been thrown up. I have been sorry to observe, from one of the accompaniments to your Revenue Letter No. 19 of 1881, that much land has recently been resigned, but this appears to have occurred as extensively in Ka'adgi, to which the Act does not apply, as in the four districts in which it is in force, and may, therefore, be due rather to the consequences of the famine than to the operation of the Act. But the point deserves careful investigation, and it would be well that you should require the Collectors of the four districts to report to you particularly, on the extent and causes of resignation of land and of coercive processes for the recovery of the revenue, stating whether the ryots were obliged to resort extensively to borrowing in order to pay their assessment, whether they were unable to procure loans, and if so, how they paid their instalments.

15. You should also ascertain, with reference to Mr. West's 28th paragraph, whether there has been any unusually extensive transfer of lands.

16. I need hardly add that, in any inquiries which it may be necessary to make, you should be careful to obtain the free opinion of competent persons, official or non-official, Native or European, and whether favourable or unfavourable to the Act.

17. In conclusion, I would observe that the Act has not been long enough in operation to express a confident opinion as to its efficacy, and that some further time must be allowed to elapse before a proper decision can be arrived at in regard to many of its most important provisions. Still it is desirable that no greater delay should be allowed to occur in coming to a conclusion on the subject of this Despatch than is absolutely needed to obtain the requisite experience and information. If the Act is working mischief, the sooner this is found out and remedied the better; if it is doing good, the sooner this is established the better; and if the principles of the Act are beneficial, but it contains some defects, the earliest occasion should be taken of removing them.

From the Government of Bombay, to Her Majesty's Secretary of State for India,—No. 9, dated Bombay Castle, the 24th June 1884. No. 15

We now have the honour to reply to the Despatch of Your Lordship's predecessor, No. 2 of 26th January 1882, on the subject of the working of the Deccan Agriculturists' Relief Act, 1879, with special reference to the criticisms thereon, contained in a minute by Mr. Justice West, bearing date the 23rd July 1881.

2. In the 6th paragraph of the despatch under reply Lord Hartington wrote:—

While, therefore, I consider it by no means advisable to concede Mr. West's demand for a formal enquiry into the working of the Act, I think it would be well that you should, at least for some time to come, observe more closely the working of the Act than is necessary in the case of laws of a less exceptional character.

And in paragraph 16—

I need hardly add that, in any enquiries which it may be necessary to make, you should be careful to obtain the free opinion of competent persons, official and non-official, Native and European, and whether favourable or unfavourable to the Act.

3. The despatch also directed attention to the points, whether of detail or principle, on which the Secretary of State desired to be furnished with our definite opinion.

4. Before complying with this request, we will state the steps taken by us with a view to bring the working of the Act, and the different views held thereon, under our close observation.

5. In the first place we commissioned Mr. Woodward, an Assistant Collector of standing and experience, to report on the working of the Act after spending six months in the four affected districts, and using every opportunity for obtaining information. Mr. Woodward submitted his report on the 25th June 1883, and we then invited thereon the opinions of the Honourable Mr. Hope, Mr. Justice West, and the Special Judge, Dr. Pollen. In the meantime our Chief Secretary, after orally discussing Mr. Woodward's report with the persons most interested in the subject at Poona, drew up a note which contained a statement of the case, and certain *primâ facie* conclusions and suggestions, which were submitted under our orders to the consideration of Mr. Hope and Mr. West, and of a Committee composed of the Revenue Commissioner (Mr. Robertson), the Collector of Poona (Mr. Moore), Mr. Woodward, Dr. Pollen, his Assistant, Mr. Ranade, the Legal Remembrancer, and two Sowkars (Native bankers). The Committee submitted their report in October last. All the papers referred to above, together with the papers of Mr. Hope and Mr. West, and others, including Mr. Lee-Warner and Mr. Jopp, who, as Assistant Collectors, had given much attention to the working of the Act in the Satara and Ahmednagar Districts, have been compiled in a collection which

we submit as an accompaniment to this despatch. It will be seen that the collection contains Dr. Pollen's Administration Report for the year 1882 and ends with his report for 1883, which is the more valuable as having been written after consideration of the various opinions recorded in the collection.

6. Referring next to the questions propounded in Lord Hartington's Despatch, it will be found that full answers are contained in Dr. Pollen's reports and in the notes by our Chief Secretary, but we propose in this place to answer each question very briefly.

7. We take first the questions on points of detail—

Question 1 (paragraph 9).—Are we satisfied with the working of the conciliation system, having regard to the competence of the Conciliators?

Answer.—We believe that many of the gentlemen chosen as Conciliators are very competent, and that much assistance in the administration of civil justice is to be obtained from them. On the other hand, competent persons for the office of Conciliator cannot be found in sufficient numbers throughout the four districts. Many of those appointed are not competent. In 6 talukas out of the whole number 37, it has not been found practicable to appoint any Conciliators; and in his last report (paragraph 44) Dr. Pollen has had to recommend their abolition in five other talukas.

Question 2 (paragraph 10).—Has the experiment of appointing certain Subordinate Judges to be Conciliators led us to modify the previous views of our Government unfavourable to the French system of conciliation which is worked by the official *Juges de paix?*

Answer.—We see no objection to the French system so far as it is involved in the vesting of every Subordinate Judge with the conciliatory function. At present 26 of the Subordinate Judges are so vested, and we propose to extend the function to the remaining ten Subordinate Judges. But the experience referred to does not cover the real question, which is whether the French system should be completely adopted by appointing no persons to be Conciliator except the Subordinate Judges.

On this point we beg attention to the remarks of Mr. M. G. Ranade which are appended to Dr. Pollen's last report. Although we entertain serious doubts as to whether the institution of non-official Conciliators should be permanently maintained in the four Deccan districts or extended to the rest of the Presidency, we are yet of opinion that it has been useful in connection with the relief of the Deccan agriculturists, if only in the matter of assisting the Subordinate Judges in the disposal of suits for redemption; that there is no necessity for altering it so long as its possible abuses are checked by the present strict supervision; and that it is desirable at present to make no changes that can be avoided.

We are inclined to think that eventually the best permanent plan will be that recommended by Mr. Justice West, namely, that in place of the conciliation system Subordinate Judges should be required to give parties a full opportunity of friendly agreement at the first hearing of a suit before any witnesses have been called, the parties being encouraged to adopt this course by the remission of three quarters of the court-fee in the case of all suits so disposed of. And inasmuch as this plan requires no alteration of the law, but the permission only of the Government of India in the matter of the remission of the court-fee, we have decided to address that authority with the view to its being tried first as an experiment in the eleven talukas in which, as stated in the answer to the first question, the conciliation system has distinctly failed.

Question 3 (paragraph 11).—Are we satisfied with the present provisions relating to village registration?

Answer.—These provisions contemplated a Registrar in nearly every village, and it has been found impossible to give them any effect approaching the expectation of the Legislature. Reliable Registrars can only be appointed for groups of villages, and we are not satisfied with the arrangement.

Registration for all bonds being compulsory, the arrangement must be a grievous inconvenience to the people, and this appears to be shown in the very remarkable falling off in transactions registered in the year 1883, the first complete year in which the scheme of Registrars for groups of villages, as distinguished from the employment in that capacity of the village officers in nearly every village, was put in operation. We are of opinion that the first opportunity should be taken for rescinding the part of the Deccan Agriculturists' Relief Act which makes the registration of simple money bonds compulsory, while we would still compel the registration of all deeds of sale and mortgage relating to immoveable property. It

is possible that the change we advocate in the law affecting the Deccan districts might be effected in the amendment of the general Registration Act which, we believe, is in contemplation.

Question 4 (paragraph 11).—Regarding the management by the Collectors of a judgement-debtor's land, is answered shortly by the statement that the provisions of the Act to this effect, as also those regarding insolvency, are a dead letter.

8. We will now answer the questions in Lord Hartington's Despatch on points of principle.

Question 1 (paragraph 13).—Have we reason to believe that the creditors of agriculturists do not get justice whether as regards the decrees passed on their claims by the Civil Courts, or the agreements and compromises negotiated by the Conciliators?

We have no reason to believe that so far injustice is done to creditors, unless it be in decrees for payment of debt by instalments, spread over a considerable number of years without provision for the payment of further interest at a moderate rate. The abatement in claims, whether in decrees or agreements negotiated by Conciliators, is moderate, and less than might have been expected.

We are of opinion, however, that in the great majority of cases injustice is distinctly done to creditors in the matter of the execution of decrees and agreements. Being unable to touch his debtor's immoveable property, which term practically includes his crops, and being also unable to threaten him with inprisonment, a creditor can rely only on his debtor's inclination for the satisfaction of his claims even when reduced to strictly equitable proportions. We are of opinion that the Relief Act should be so amended as to place on the Civil Courts the duty of determining whether a judgment-debtor has made every reasonable effort to pay the dues decreed against him, especially when the payment has been made easy for him by an order to pay by instalments: and should a Civil Court find reason to believe that reasonable effort has not been made, it should pass an order for execution, whether by sale of immoveable property or by imprisonment.

Question 2 (paragraph 14).—Has an almost entire stop been put to agricultural loans?

Answer.—We believe that it has in regard to the great body of cultivators who can offer no security but prospective crops and earnings. And as regards cultivators who are somewhat better off, it is reasonable to suppose that the additional risk of recovery must increase the hardness of the terms on which they can obtain accommodation.

Question 3 (paragraph 14).—Can the general body of agriculturists get on without borrowing?

Answer.—The experience of the last four years gives reason to believe that they can in fair seasons. The Relief Act has occasioned no difficulty in the realisation of the revenue, and has led on the whole to no relinquishment or extensive transfer of lands. But no final answer can be given to the present question until the working of the Act has been tested by the bad season, or run of bad seasons, which in the Deccan is of certain recurrence.

9. As regards our opinion on the general working of the Act, we beg to invite attention to the appended minute by Mr. Melvill, the Member of our Council in charge of the Judicial Department, in which, especially as regards its 2nd paragraph, we concur generally.

10. The charges which we propose to make in the Relief Act are the following:—

(1) To empower the Courts to sell the land, cattle, and implements of husbandry of any agriculturist against whom a decree or decrees have been passed under which an amount is due exceeding twenty-five times the assessment on the whole land occupied by such agriculturist.

(2) To introduce an explanation in Section 22 of the Act to the effect that standing crops are not immoveable property within the meaning of the section.

(3) To add to Section 21 of the Act the following provision, or one to the same effect:—

"Provided that, if it appear to any Court, upon the application of the decree-holder, and after hearing the judgment-debtor, if he appear, and taking such evidence as the parties may produce, that the judgment-debtor has failed to make such payments in satisfaction of the decree as the Court thinks that he ought to have made, or has failed to pay any instalment which he has been directed to pay, the Court may order that the judgment-debtor be arrested and imprisoned under the provisions of Sections 336 to 343 of the Code of Civil Procedure."

(4) To alter Chapter VIII of the Act, so as to exempt from the necessity of registration obligations for the payment of money which do not create a charge upon immoveable property.

In explanation of the first of these proposed changes, we would observe that it is only fair to creditors, and is also desirable in the interests both of the State and of the cultivators themselves, that rayats who are hopelessly insolvent should cease to be proprietors of land which they cannot cultivate with advantage, and should descend to the position of day-labourers. While, however, authorising the Courts to sell the land of rayats whose decreed debts exceed twenty-five times the assessment, we would empower them to consider whether the total debts can be liquidated by instalments within 20 years, and, if this appears probable, to fix such instalments which should ordinarily include fair interest on the principal debt. In default of payment of any instalment so fixed, the land should be immediately saleable on the application of any of the decree-holders.

The object of the second proposed change is to enable creditors to attach their debtors' crops before they are reaped and removed. It was no doubt intended by the framers of the Relief Act that creditors should ordinarily look to the crops for the satisfaction of their debts: but this intention has been defeated by the judicial decisions that standing crops are immoveable property, and, as such, exempt from attachment.

The third and fourth proposals for the modification of the Act are sufficiently explained by the observations which we have already made.

P.S.—We beg to call Your Lordships's attention to the note on the Deccan Agriculturists Relief Act by Mr. J. B. Richey, our Acting Chief Secretary, at the end of the accompanying collection, and to state that, after giving to it all the consideration due to anything written on such a subject by an officer of Mr. Richey's merit, we see no sufficient reason for deviating from the views expressed in our despatch. Copies of the minutes recorded by us on Mr. Richey's note are hereto appended.

Minute by the Honourable Mr. MELVILL, dated the 26th April 1884. No. 1

The Deccan Agriculturists Relief Act has not yet stood the test of a bad season, so that all opinions as to its merits or demerits must still be to a great extent theoretical. The consequence is that no two officers are agreed as to the actual results of the measure, nor as to the policy to be pursued in future.

2. We may, however, safely inform the Secretary of State that the Act has been a success, in so far as it enables the Courts to go behind the contract between the parties and to reduce all claims to the amount fairly and reasonably due It is also satisfactory that agriculturists have been very ready to take advantage of facilities for bringing redemption suits which are afforded by the Act, and by the remission of stamp duties in connection with such suits. A great number of rayats, especially in the Satara District, have recovered possession of their lands, though many have, through poverty, been unable to take advantage of the decrees passed in their favour. If the projected Poona Agricultural Bank can by advances enable such decree-holders to redeem their lands, this will probably be found to be the most useful direction in which an Agricultural Bank can operate.

3. The money-lenders do not complain of the investigation into past transactions, nor of the reduction made by the Courts in the amount of their claims. The average reduction is stated to have been about 30 per cent. on the amount claimed. The sums decreed are probably in every instance quite as much as the creditor ever expected the debtor to pay.

4. What the Savkars really complain of is that, when they have obtained a decree, it is impossible for them to execute it.

5. That this would be the case was anticipated by the opponents of the Act, and it could hardly be otherwise. By the Act and by the Code of Civil Procedure, an agriculturist's house and land (unless specifically mortgaged) are exempted from attachment and sale; and so are his cattle, his implements of husbandry, and his wearing apparel. The agriculturist himself cannot be arrested or imprisoned. It was probably intended by the Legislature that the creditor should look principally to his debtor's crops; and this no doubt is generally the intention of the contract between the parties, whenever there is no specific mortgage of the land. But standing crops have been judicially determined to be immoveable property, and, as such, protected by Section 22 of the Act, the result of which is that the Savkar cannot attach the crop before it has been reaped, and the rayat generally manages to reap and remove it before his creditor can interfere.

6. Having no means of executing his decree, the Savkar has to take whatever his debtor chooses to give him. I believe that many of the rayats do to a certain extent try to pay their debts; but their consciences are not very sensitive on the subject. Mr. Woodward writes that "the rayats consider that they would not be justified in paying anything on account of old debts, until they have made suitable provision for their needs up till the next harvest;" that is to say, the rayats only pay as much as they find convenient, and they do not find it convenient to pay much. The Judge of Ahmednagar reports that rayats are generally contumacious, that they will not pay instalments, and that they set their creditors altogether at defiance.

7. It is true that in their last Administration Reports Dr. Pollen and Mr. Ranade dispute these conclusions, and even assert that "the results of execution proceedings in the four Deccan districts are much more favourable to creditors than they are in the Presidency generally." I must express my surprise that any one should be able to persuade himself that a creditor who cannot touch his debtor's person or property is really better off than a creditor who can do both. The figures by which it is endeavoured to establish this curious proposition certainly fail to do so. They seem to me to show that there have been about 4,000 applications for execution in money suits during the last year, and that satisfaction, in whole or in part, has been obtained in about 1,200. But this satisfaction was obtained by actual attachment of property in only 172 cases; so that in the rest of the 1,200 instances, that is, in about one quarter of the whole number of suits, the debt must have been paid voluntarily, or else settled by a new bond, which was certified as a settlement to the Court. In comparing these results with those in the rest of the Presidency, it must also be remembered that decrees against agriculturists are commonly made payable by instalments, and it is to be expected that voluntary payments should be more readily made in such cases.

8. There can, I think, be no doubt that the smaller Savkars whose dealings are directly with the rayats, have suffered greatly from the operation of the Act. They have to borrow the money which they lend; and while they cannot recover their own debts, they are forced to repay what they owe to larger capitalists. Dr. Pollen's Assistant, Mr. Bhide, reports that "many petty dealers and village Marwaris have given up money-lending and taken to other occupations." Some of them try to make themselves out agriculturists, and so obtain the protection of the Act. The Judges of the affected districts state that the smaller Savkars are generally in a condition bordering on insolvency.

9. The result has necessarily been that money-lending has been greatly curtailed. Mr. Woodward estimates that transactions between Savkars proper and agriculturists have been reduced 75 per cent. Dr. Pollen in his Administration Report states that the number of mortgages in 1883, as compared with 1882, has fallen from 24,366 to 13,389, and the number of simple money bonds from 41,149 to 16,705. He adds—"It may be that the loss of the rayat's credit is the chief cause of this remarkable change, but it may also be due to his improved condition, and the consequently decreased necessity on his part for borrowing or it may be that both causes are simultaneously in operation. I am inclined to believe that the last is the true explanation." It is quite possible that the poorer rayats, having had fair seasons, and having kept possession of their whole crops, have not been under an urgent necessity to borrow. They have been in unusually prosperous circumstances; the revenue has been realised without difficulty; and cultivation, instead of falling off, has been extended. But it is agreed on all hands that the credit of the poorer class of rayats with the Savkars is at an end. The really solvent agriculturists, that is, those who ordinarily pay their debts without legal compulsion, can still obtain loans, though probably at a higher rate of interest than before. "The richer class of money-lenders," writes Mr. Bhide, "deal with great caution and care with agriculturist debtors. There have not been many noticeable instances of solvent agriculturists being unable to get a loan. Solvent agriculturists, as a rule, find no difficulty in obtaining credit." But there can be no doubt that the poorer rayats are unable to borrow at all.

10. Up to the present time, as I have said, this loss of their credit has not affected the poorer rayats injuriously. But it is not possible that their present prosperity should continue. They are not likely to make provision for a time of distress out of their present unexpected abundance; and it is admitted on all hands that the Deccan rayat cannot, on an average of seasons, carry on agriculture without the aid of loans. When a bad season comes, the rayats will find themselves without their usual support from the Savkars, and they will necessarily look to Government for the advances which they require. Dr. Pollen informs me that Mr. Ranade estimates that 50 per cent. of the rayats will be able to get on without

assistance. It may be hoped that this will be so; but the burden on the Government will still be very heavy, and there is apparently no escape from it. If it can be satisfactorily met, then perhaps the problem of supplying the rayat's necessary wants, without encouraging his extravagance, will have been satisfactorily solved.

11. Meanwhile, it is desirable, if possible, to lessen the prospective liabilities of Government by restoring confidence among the Savkars; and it is also a bare measure of justice to give them increased facilities for the recovery of their debts. It is in the highest degree unjust that, when the creditor's claim has been cut down to its lowest point, he should still have no means of enforcing payment. It is high time that the Relief Act should be so amended as to afford some relief to the creditor as well as to the debtor. Mr. Woodward's saying is often quoted, that since the Act was passed debtors are comforted and creditors are tormented. We need not carry out the parable to its bitter end, and refuse to the creditor a drop of water to cool his tongue.

12. Some officers—notably Dr. Pollen and Mr. Ranade—deprecate any immediate change in the law, suggesting, among other advantages of delay, that, if we wait long enough, many claims will become time-barred, and then the rayats will be better able to stand alone. This appears to me to be a strong argument not in favour of but against delay.

13. I find that two measures for the relief of the creditor have been proposed, *viz.*—

(1) that the land of an agriculturist should be saleable in execution of a decree for unsecured debt whenever he is found to owe as much as 25 times the assessment:

(2) that, whenever a debt has been made payable by instalments, and the debtor fails to pay an instalment, the assistance of the Revenue Law and Establishment should be given to the creditor for the realisation of his instalments, as if they were revenue in arrear.

14. The Chief Secretary has pointed out in paragraph 7 of his third note how the first of these measures would work. I quite concur in the advisability of adopting it, though rather as an economic measure conducive to the public interests, than as likely to give much relief to creditors. The land sold will generally be the worst land in the village, and is not likely to sell for much. But it seems very desirable to divorce from their lands a set of absolutely insolvent agriculturists, who,—*sua si bona norint*,—would know that they are much better off as day labourers, freed from the anxiety of paying the Government assessment on land which they cannot cultivate to advantage. For some time to come they will find plenty of work on the railways which are in progress in the Deccan, and this will tend to reconcile them to the change.

15. Of course, if this measure be introduced, there will be no need any longer to protect the cattle and implements of husbandry of a rayat whose land is sold.

16. The second measure proposed, although otherwise excellent, appears to me open to the objection raised by the Chief Secretary in paragraph 13 of his third note. The Government assessment is properly recoverable from the land, whether the occupant is the sole owner of the land or not: but it would not be fair to the debtor's co-proprietors, if any, to make his private debt recoverable by distraint from the joint estate.

17. I would suggest other measures, which might perhaps effect the object in view.

18. In the first place, I think that the debtor's crop should be made more easily available to creditors. This might be done by simply adding to Section 22 of the Act an explanation to the effect that standing crops are not immoveable property within the meaning of the section. This would enable the creditor to attach such crops in the ordinary manner; and the debtor would not be able, as he often does now, to reap his crop clandestinely and put it beyond his creditor's reach.

19. But in this country the power of attaching property is not the most effectual weapon which a judgment-creditor possesses. It is indeed a double-edged weapon, which is quite as likely to injure the creditor who uses it as the debtor who is attacked. I suppose that half the litigation in our Courts arises out of attachments, and it is litigation of so uncertain a character that the changes are by no means favourable to the decree-holder. Claims to the attached property are set up by mortgagees and purchasers, real or fictitious, and still more frequently by the debtor's coparceners. Almost every Hindu is a member of an undivided family; or, if there has been a partition, it is difficult for the creditor to ascertain it, and still more difficult to prove it. No member of an undivided family can claim to have a separate interest in any portion of the family property; so that, if any portion of that

property be attached, and the sons, or brothers, or other coparceners of the debtor come forward to assert their claims, our Courts are bound to hold that the attached property cannot be made available for satisfaction of the decree, and that the only course open to the wretched creditor is to bring a general partition suit, to which all the members of the family must be made parties, and in which all the family property must be included. How the creditor is to ascertain the exact number of pots and pans in his debtor's family and the number and value of the ornaments worn by his female relations it is not easy to see; and in fact I believe that a decree-holder, who has once failed to prove that attached property belongs exclusively to the judgment-debtor, very rarely has the courage to engage in the worry and uncertainty of a partition suit. It has always been a wonder to me how any creditor ventures to attach any property belonging to a Hindu, so certain is it that he will find himself launched on a sea of litigation, on which he will probably be wrecked.

20. A much more effective remedy than attachment is the power of arrest and imprisonment. This power is not often exercised when a debtor is really unable to pay; for creditors do not care to indulge in the luxury of keeping pauper debtors in jail at their own expense. But when a debtor really can pay, imprisonment, or even the threat of imprisonment, is the surest way of compelling him to do so. It induces the debtor himself to give up such property as is available, and so saves the creditor from the difficulties of seeking out such property, and from the risks consequent upon the attachment of goods which may or may not be properly subject to attachment under the decree.

21. I do not advocate the restoration of the power of arrest and imprisonment in all cases, but I think it may appropriately be made applicable to all cases of wilful default, and I believe that the knowledge that such a power exists will go far to prevent such default. It might be enacted that, whenever a Court is satisfied that an agriculturist has not made such efforts as he ought to have made to satisfy a decree, the Court may order him to be imprisoned under the provision of the Code of Civil Procedure. I would give power to inflict the same punishment in all cases in which default is made in payment of instalments. The system of decreeing payment by instalments is carried out to an extent which cannot, I think, be justified, and which must bear very hardly upon the savkars. Indeed, the provision of Section 20 of the Act, which authorises the courts to direct that the amount of any decree shall be paid by instalments with *or without* interest, has always appeared to me a very unfair provision, and I am surprised that it has not attracted the notice of any of the opponents of the Act. The provision is, no doubt, borrowed from the Code of Civil Procedure, in which there was very good reason for its insertion. The Courts in their ordinary jurisdiction have, in the absence of fraud, to give effect to the contracts between parties, and in so doing they are often compelled to award sums in excess of what is fairly and reasonably due. By directing payment by instalments without interest, the Courts are enabled to correct this unfairness, and virtually to reduce an exorbitant rate of interest by spreading payment over several months or years. But even in these cases the subordinate Courts are obliged to be held in check; and the reports show that the High Courts are constantly called upon to interfere with decisions which extend the payment of decrees over so long a period as to be unfair to creditors. But in the Deccan Relief Act, as it appears to me, there is no such reason for the provision, and the extent to which it is applied would never be tolerated in ordinary cases which come before the High Courts. When a creditor's claim has been cut down to such an amount as is fairly due at the moment of the decree, why is he to be compelled to go on lending his money for nothing for 20 or 30 years? This, and nothing else, is the effect of the provision, and of the manner in which it is applied. The question has been raised and discussed whether some limit should not be placed to the period over which instalments may extend, and it has been variously proposed to fix such limit at 20 and at 30 years. But a creditor, whose decree gives him no more than his principal and a fair amount of interest, is hardly used if the decree is made payable, without interest by instalments extending over any period, however short. I observe that Dr. Pollen in his last report says—"In some few instances I have had to interfere by allowing future interest at a low rate on the principal of the debt, when the instalments are spread over a long period." This shows that the injustice of the present system has forced itself upon Dr. Pollen's notice, but he has not done much to abate it. Passing over this defect in the Act, I do not think that any debtor, to whom so much indulgence has been shown, has a right to complain if he is made liable to arrest upon default made in the payment of an instalment. "Have patience with me, and I will pay thee all" is the plea on the strength of which special protection has been extended to him. If he abuse his creditor's patience, or even if it appear that he cannot perform his promise, he may properly be handed over to the tormentors. The torment in prospect for him is not very severe; for, as the Chief

Secretary observes, no one can be imprisoned under any decree for more than six months, and the prisoner can always obtain his discharge by taking advantage of the Insolvency Law.

22. I am inclined to recommend that the words "or without interest" should be omitted from Section 20; but at any rate I am in favour of the addition of some such provision as the following to Section 21, which exempts agriculturists from arrest and imprisonment:—

"Provided that, if it appear to any court, upon the application of the decree-holder, and after hearing the judgment-debtor, if he appear, and taking such evidence as the parties may produce, that the judgment-debtor has failed to make such payments in satisfaction of the decree as the court thinks that he ought to have made, or has failed to pay any instalment which he has been directed to pay, the court may order that the judgment-debtor be arrested and imprisoned under the provisions of Sections 336 to 343 of the Code of Civil Procedure."

23. There are only two other minor points which require some notice, *viz.*, conciliation and village registration.

24. Opinions differ as to the success of the present system of conciliation. Mr. Woodward condemns it. The other members of the late Committee appointed by Government support it, subject to certain modifications and qualifications. Mr. Hope and Mr. Lee-Warner are entirely satisfied with it, though they, as well as Mr. Ranade and the two Savkar members of the Committee, think that the Conciliators should be given greater power to compel the appearance of parties before them. Mr. Justice West, with whom Mr. Woodward concurs, thinks that the Subordinate Judges are the fittest, and indeed the only, fit, persons to be appointed Conciliators. This view is in accordance with the French system, from which the idea has been borrowed, and with the views of the former Secretary of State on whose suggestion it was adopted. Twenty-six Subordinate Judges have been made Conciliators by way of experiment. Mr. Woodward says of them—"As Conciliators they are, as might be expected, more successful than their brethren. Where the parties are before the Subordinate Judge in his capacity of Conciliator he can generally prevail on them to come to terms, except perhaps in redemption cases. He commands the respect and confidence of both alike, beside enjoying superior facilities for securing their attendance. It seems probable that a continued decrease in litigation will, in a few years, give the Subordinate Judges more leisure to devote to conciliation, and that, if they be maintained at their present strength, they may be in a position to take upon themselves nearly all conciliation work. Their appointment as Conciliators has been most popular. Moreover, by their success in conciliation the number of suits that would come before them is *pro tanto* decreased, and they thus contribute to diminish the work of the courts, while affording to the agricultural class the means of obtaining cheap and ready justice." Even those officers who think that the non-official Conciliators have done well appear for the most part to be of opinion that Subordinate Judges would do better. Dr. Pollen says—"No doubt the Subordinate Judges would be the most satisfactory persons to do this work, if they could spare sufficient time from their other duties; but at present few of them can spare the necessary time." The late Committee admit the difficulty of obtaining fit persons for the office of Conciliator, but propose to remedy the defect by conferring on Subordinate Judges additional powers of revising agreements entered into before Conciliators. This suggestion, as the Chief Secretary observes, seems impracticable and condemnatory of the existing system; but it amounts to an expression of opinion that the Subordinate Judges are the persons to whom the task of conciliation may most fitly be entrusted. Mr. Lee-Warner expresses approval of the French system, and says that the best Conciliatore he had met were two Subordinate Judges. Mr. Justice West has given very weighty reasons for his opinion, and the suggestions which he makes as to the form which the proposed measure should take are very simple and practical; and I should be glad to see the system which he proposes adopted throughout the four Deccan districts. Mr. Ranade's opinion, however, in favour of the existing system, as given in his last Administration Report, is exceedingly strong, and there is no doubt that that system greatly relieves the Subordinate Judges, who are at present overweighted by the great number of redemption suits, which must necessarily be of a complicated and difficult nature. On the whole, therefore, I think that it will be better to proceed tentatively and only introduce Mr. West's scheme in 11 talukas in which the conciliation system has failed in consequence of the impossibility of finding fit persons to serve as conciliators. In the remaining 26 talukas the present Conciliators might be retained, the Subordinate Judges being also appointed Conciliators where they are not so already. I believe that the Conciliators would work more effectively, if they were empowered to compel the attendance of parties, but this the Legislature has refused to allow. There seems to be some difficulty in the matter of serving the Conciliators notices, and the Poona Committee suggested

that a fee of one anna should be charged on every application to a Conciliator, in order to form a fund for keeping up a staff of process-servers. But it seems better, as Mr. Ranade says, that notices should be served by the village Mahars, who are best acquainted with the agriculturist in the village. A fee might fairly be charged in order to defray the cost of the establishment which it has been found necessary to give some of the more heavily-worked Conciliators and the cost for stationery and petty contingencies; but a fee of one anna would go very little way towards meeting this expenditure. As the system of non-official Conciliators will probably die out, as Mr. Justice West's scheme becomes more extended, it is hardly worth while to provide by legislation for the imposition of any fee on an application to a conciliator.

25. I entirely concur in the opinion that the system of registration should be limited to instruments affecting immoveable property. The compulsory registration of all such instruments, irrespective of value, has been proposed, as a financial measure, to take effect throughout India. This is as desirable in the interest of the subject as for the benefit of the revenue: for the present law, which makes the registration of certain instruments optional but invalidates them when they come into competition with registered instruments of later date, is a trap for the unwary, and has unfairly deprived thousands of innocent mortgagees and purchasers of their property. If the general law be altered in this respect, no special legislation for the Deccan will be necessary. But the trouble and expense which must be entailed upon every lender and borrower by requiring the registration of every money bond, and even of every entry signed by a debtor in his creditor's books, must be so great as to outweigh the consideration that the present system operates to a certain extent to protect the rayat against fraud. From the time when it was found impracticable to provide a trustworthy registering officer in every village, the burden of such protection must have cost the rayats far more than they would lose through occasional acts of fraud.

Minute by the Honourable Mr. MELVILL, dated the 26th May 1884. No. 154

Mr. Richey was a prominent member of the Deccan Riots Commission, and he is so great an authority on all questions connected with the economical condition of the rayats that the collection of the papers on the Relief Act would be incomplete without his opinion.

The subject has been already so fully considered by Government that I should be glad to avoid any further discussion; but the great weight which attaches to everything which Mr. Richey writes on the subject makes me feel that I am bound to explain why his arguments have not altered the conclusion at which I had arrived.

Mr. Richey seems to write as an advocate of the rayats, and justice to the Savkar enters in a very small degree into his consideration. But it is the duty of Government to hold the balance evenly between the two classes, or at least to see that no gross or glaring injustice is suffered by either of them. In so doing we are only giving effect to the intentions of the Legislature, which was not, as Mr. Richey seems to suppose, to reduce interference to a minimum, and to avoid every form of coercion. The Honourable Mr. Hope, in introducing the Relief Act, said— "We cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we give the creditor full and effective aid in obtaining all that is fairly due and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable."

It is admitted on all hands that the intention of the Legislature in this respect has been frustrated. The decrees of creditors, when their claims have been cut down to the most moderate amount, can hardly be enforced at all. They have to take what their debtors are willing to give; and in most cases they are willing to give very little.

We have in our despatch made three very moderate proposals, with a view to remedying the defects in the Act, and to giving it such an operation as the Legislature intended.

These proposals are—

(1) that crops should be subject to attachment;
(2) that the land of rayats who are hopelessly indebted should be sold;
(3) that contumacious debtors should be liable to imprisonment.

The first of these proposals Mr. Richey cordially accepts. He wishes that the process of attachment should be carried out by revenue officers rather than by the officers of the civil courts. This is not a point touched on in our despatch, and it is unnecessary to discuss it now. It will be time enough to consider it when we come to amend the Act.

Mr. Richey objects to the second proposal, not because he considers the expropriation of insolvent rayats to be unjust or undesirable, but because he thinks it better that they should be compelled by the pressure of circumstances to sell their land themselves, and that the Sirkar should not incur the odium of selling it. If we could be sure that the process of voluntary transfer would go on, as Mr. Richey expects, I should concur in the view which he expresses. But there are, I think, no signs of this at present. The registration statistics for last year show a diminution in the number of sales of land. Mr. Richey anticipates that, when a bad year comes, the insolvent rayats will be obliged to sell their land, because the Savkars will not otherwise give them money. But I am not sure that this is the most probable result. Knowing the tenacity with which the rayats cling to their land, I am inclined to think that, being unable to get money from the Savkars without parting with their land, they will turn to the Sirkar for assistance. What answer are we to give them? Are we to say—"We will lend you nothing. You have your land: go and sell it?" If we answer them so, shall we incur any less odium than if we allowed the land to be attached and sold by their creditors?

Mr. Richey objects to our third proposal in practice rather than in theory. He admits that debtors should be made to pay their just debts, but does not approve of pressure being put upon the Deccan rayat in what I think is the only effectual manner. I see no reason to alter the view expressed in our despatch. We have only proposed to render contumacious debtors liable to imprisonment; and there is little fear that the penalty will be applied to those who are honestly endeavouring to pay their debts. Experience has shown that the civil courts in the Deccan are by no means disposed to deal harshly with the rayats, but, on the contrary, that they are more likely to err in the direction of unreasonable indulgence.

Mr. Richey would continue the compulsory registration of money bonds. He thinks that one good effect of the inconvenience which the system causes is that, instead of trusting to bonds constantly renewed on exorbitant terms, the Savkars will in future have to depend upon their accounts. But an account, if signed (as it usually is) by the debtor, becomes "an obligation for the payment of money," and requires registration. If it is not so signed, the money-lender may introduce anything he pleases into his accounts, and all safeguards against fraud are removed. Moreover, it is certain that a Savkar would not lend to the poorer rayats without a bond: and the solvent rayats, who borrow without a bond, will have to pay more for the accommodation. The power of the courts to inquire into the whole history of debt is fatal to the system of turning interest into principal upon the renewal of a bond. On the whole, I think that the great inconvenience caused by the compulsory registration of all obligations for the payment of money outweighs the considerations put forward by Mr. Richey. No doubt we shall lose the materials for information regarding all the money transactions of the peasantry, and this is to be regretted; but the registers will still contain a complete record of all mortgages and sales, which are the most important kind of transactions.

Minute by His Excellency the Right Honourable JAMES FERGUSSON, *Governor of Bombay, dated the 26th May 1884.*

I concur. It strikes me on reading Mr. Richey's Note that he argues rather *à priori* than withdue recognition of the facts and experience which have led us to our conclusions. I should think that he can hardly have followed the correspondence which has passed for two years on the subject, and we cannot after all forget that the machinery of the Act has been found wanting to accomplish the intentions of the Legislature and the decrees of the courts. Again his objections repeatedly deprecate an extent of interference and of procedure which we do not contemplate, and should not at least at present consider necessary or judicious. And while he pleads for a fair trial of the Act before further amendment, we cannot but think that it had a sufficient trial, being highly experimental, to prove its defects, and, moreover, that it would be dangerous to leave those defects unrepaired till the time of strain, which all anticipate, has actually arrived.

I should think the Honourable Mr. Melvill's minute on Mr. Richey's note valuable to accompany it, but if my honourable colleagues think it unnecessary, the brief remark Mr. Melvill proposes will suffice.

Minute by the Honourable J. B. PEILE, *dated the 30th May 1884.*

I am of the same opinion. We need not enlarge the discussion by going outside of the alterations we proposed in the Act which are limited enough.

The operation of the Act divides into two main parts :—

(1) The award by the court of a fair sum to the creditor after going to the root of the transactions between him and his debtor. This part is quite satisfactory, and might well be extended beyond the four districts to which the Act not applies. And I note here that, if the court does its duty in sifting the transactions on which a money bond rests, there is not much necessity to protect the debtor by insisting on having it registered. The scrutiny of the court makes up for the carelessness of the borrower.

(2) The recovery for the creditor of the sum awarded to him as his due. Here it is admitted that the process on which the promoters relied has been ineffectual; that the intention of the Act as an instrument of quick and certain recovery is not fulfilled. When we are satisfied of this, we are bound to apply immediate remedies, even in the point of view taken as adverse to change, that the Act should be allowed a fair opportunity to prove its quality. If men are testing an engine and some part of it breaks at the outset, do they go on with the broken valve or wheel in order to give the engine a fair chance of showing what it can do?

Moreover, the changes which we propose, while they repair the Act where it is broken down, by no means involve a departure from broad principles, either of our law or of Native tradition.

The general law by no means accepts the principle that the land should without reserve be made the security for debt and be sold by the intervention of Government for the benefit of the creditor. The leaning of the Civil Procedure Code is rather the other way, for it contains elaborate provisions for avoiding the sale of immoveable property in execution of a decree, if the claim can be satisfied by any expedient short of sale. The aid of the revenue executive may be called in to try every expedient, even in the case of insolvents, and it is only when these are exhausted that the Collector finally* sells the property in execution of the decree transferred to him by the court.

* In the Deccan Act, the Collector manages *only* the land the debtor does not want for maintenance *only* for 7 years—instead of selling the whole—a very poor consolation for the creditors, even if the plan had worked, which it never did.

Both the Civil Procedure Code and the Deccan Relief Act make an exception in regard to immoveable property specifically mortgaged for the re-payment of the debt to which the decree relates. It would seem that in such cases the Collector is to sell such property without trying the above expedients, and under the Relief Act such property may be attached and sold.

But as regards immoveable property not specifically mortgaged, the Relief Act is imperative.

"No agriculturist's immoveable property shall be attached or sold in execution."

This has been held to include standing crops with a result manifestly unjust to the creditor.

But even as to land, or rather the right of occupancy of land, it is found to be too absolute, and what we propose instead is that the agriculturist debtor's land should not be sold except in two cases :—

(1) When the court finds that the debtor is so heavily indebted that it is impossible that he should pay his debt by instalments in any reasonable time.

(2) When the court judges that the debtor is wilfully making default in paying instalments fixed by the court, although he has the means of paying.

In other words, debt will be paid by instalments and the land preserved to the holder whenever that is practicable and as long as the holder acts honestly in paying by instalments.

This, as far as I can see, is the principle of the Civil Procedure Code, only made more imperative on the Court.

And I think that the action of the State Courts of Justice, as thus defined, should present itself to the people as that of a Government which is anxious to avoid the severance of the landholder from the land as far as is compatible with justice and public expediency.

This procedure maintains in occupation of the land that solid class of proprietary rayats known as mirasdars in the Deccan, and by other names elsewhere, but found in all parts of India, which forms the core of rustic society. And it does so on a just principle, *viz.*, that

the creditor shall not take his debtor's land as long as he can be paid his due by the produce of the land. I am not prepared to go a great deal further and say that on grounds of public expediency (*i.e.*, to avoid unpopularity) Government should altogether, and in all circumstances, refuse to exercise its power in giving through its courts to creditors help to recover their dues by sale of the debtor's land: that we should say, we will in no case attach or sell land in execution. Government is responsible to other classes as well as to agriculturists. Under Maratha rule, the land of mirasdars and similar old tenants was a heritable and saleable property, just as it is now. Of course, it was not sold in execution by the Courts, because there was then no regular civil procedure, and hardly any justice. But now that the administration of justice is established on recognized principles, I should greatly hesitate to lay down that the land of India, a property of enormous value in the aggregate, cannot be touched by the creditor, while it is a saleable property which the debtor may dispose of any day and put the sale proceeds in his pocket.

On the other hand, the traditional attachment of the old tenants to their land, and the scarcity of other employment to which they may transfer themselves, and political considerations connected with the peace and contentment of the country fully justify Government in protecting the rayat in possession of his ancestral holding as long as he pays his debts from the produce, and in legislating and carrying out executive measures for this end.

I entirely approve of the sections of the Civil Procedure Code designed to give facilities for this procedure, and of those of the Deccan Relief Act which enforce them more precisely and absolutely.

And it is quite consistent with the above view that we should agree to the sale of the land, or occupancy right in it, when the accumulated debt of the holder cannot be paid from the produce in any reasonable time.

This measure, limited to these cases only, will not have the effect apprehended by Mr. Richey of offering the land as security for debt, because power is not given to the creditor to demand a sale as of right: because the court is understood to exercise its discretion of sale reluctantly and only in lack of any alternative way of satisfying just claims; and because it will never be known until the decree of the court is issued, whether the land will be sold or payment decreed by instalments. The cases in which sale is decreed on this ground will be too few to affect the credit of the agricultural class as a whole. It can hardly be supposed that a banker will lend more freely than he otherwise would, simply because he knows that if he heaps up on a debtor occupant more unsecured* debt than his occupancy is worth, the court may order it to be sold. The security will continue in the main to be the crops recovered by instalments, and credit will adjust itself thereto.

* I mean for which land is not mortgaged.

And while the sale of these heavily-encumbered occupancies will do no harm by inflating credit, it is in other ways publicly expedient.

I think no body denies that these pauper occupants, clinging on with no capital to small holdings of poor land which the Relief Act as it stands enables them to inhabit as little Alsatias in defiance of their creditors, are a public evil. The country is being transformed by railways and commerce, and some change in the holding of land is likely to ensue. It is certainly desirable that the soil which grows our exports should be in hands which are able to do justice to it. Now, if we maintain the Relief Act as it is, we fortify these paupers in their holdings, because we do not let the law touch them, and the holders will not resign them but hang on to them tenaciously until they are driven out by starvation.

Mr. Richey would leave them alone until they are constrained to sale by a famine. But what market is there for the occupancy of poor or even good land in a famine? Every one is spending his spare cash on bare living. We know as a fact that large areas of such land fall out of cultivation in famine times. The occupants emigrate, or quietly sit still and starve.

Then who are these occupants? Is there any traditional prejudice against their land being sold? I think not. They are certainly not mirasdars. Even in Maratha times there was a large inferior class of Upris, *novi homines* in the village, with no hereditary right of property in the land. The poorer occupants, who dwell on the border line of agriculture and labour and belong definitely to neither, who abandon cultivation in time of famine, and spread again over the margin of inferior waste land when better times return, no doubt belong to the lower class. It is true that in virtue of the survey tenure every occupant is a mirasdar, but that is a distinct affair from the status given by Native sentiment and tradition.

I have always held, and many hold with me, that this lower fringe of the class of cultivating rayat would better be cut off and dropped into the ranks of labour which are far from badly off at present. At the same time, let economic processes deal with that. All I say is, do not

et us frustrate their action by special laws. If we make an exception to the principle that property which is saleable otherwise ought to be saleable to pay the owner's debts, let us do it on indisputably good grounds, and not in the face of public expediency as well as justice.

I do not think that the provision of the Relief Act, whereby the collector manages *surplus* land of an *insolvent* (not needed for his support) for seven years only, and then hands it back to the insolvent who is thereupon free of liability, is fair to the creditors.

I have thus stated (very hastily, as I am pressed by other work) the principles on which I have understood that our proposals were shaped. It seems to me that as the main principle is that land should *not* be sold in execution of decrees, Mr. Richey ought to agree with them.

I am quite in favour of using the revenue establishments so as to attach the debtors' crops in successive years, and thus secure them to the creditors. I myself introduced this suggestion into the discussion in my first minute.

I would limit imprisonment strictly to cases of contumacy or fraud.

I may repeat in conclusion what I said in my first minute that the form of relief proposed for landholding rayats in time of famine is loans from Government to supply the means of subsistence and prepare the land for tillage, that they may not have to obtain loans from money-lenders on ruinous terms. It is found that the cultivating rayats do as a fact maintain themselves at home in time of famine, and do not in any large numbers go to relief works. Our hope is that by their own means, and with moderate help from Government, they will be able to hold their ground. Of course the extent to which this hope is realized will depend on the proportion of these rayats which is solvent and has some means at the time the famine comes. Now it is admitted that the class of rayats whose occupancy right we propose to permit the courts to sell, if their debts cannot be paid by instalments, are insolvent and have no security to offer. The promoters of the Agricultural Bank scheme will have no dealings with this class. They have no credit. If, therefore, Government legislates to protect the land held by this class from being sold in execution, it is in fact deliberately maintaining on the land a class of pauper farmers without means, whom it will be bound to prop up with public money in time of famine. That is, the public money will have to be lent chiefly to a class which has no credit and no security. Mr. Richey says—No, they will have their land to sell when famine comes, and if we let it be taken from them now by the courts, we shall be doubly responsible. But in the first place they can get nothing for their land in time of famine. Their struggles to hold on to it will probably fail, the Government loan will be lost, and the land will finally be abandoned and thrown into waste. So Government will lose both loan and revenue. Whereas, if the land has been sold to pay the creditors and the holder has become a day-labourer, famine relief takes the simple shape of giving a day's wage for a day's work. If the man is half farmer, half labourer, as it is said he often is, he may come to Government for relief both as farmer and labourer. If because of his morsel of land he "lives at home idle, eating his future crops," his case is sure to become desperate, and both for his own sake and that of the public he would be much better a labourer, pure and simple. It is well known that there is such a class of precarious farmers who take up land in good years and abandon it in bad, and that their collapse in famines accounts for the large area of poor land which then falls out of cultivation. Their hold on the land is very transient, and though we cannot expropriate them by executive measures, on the other hand, there is no deep-rooted association with paternal holdings which should induce us to protect their connection with their holdings from severance by the courts. It is necessary to our finance and to commerce that our land-holding body should be as solvent as possible, and we should do nothing to obstruct the transfer of land from bad hands to good. I have endeavoured to show that the occupants who will be affected by the restoration to the courts of a discretion to sell the occupancy rights of really bankrupt rayats are not the old rayats—the old substantial proprietary, which I have called the core of rustic society.

Remarks by the Honourable Mr. Justice WEST *on the Bill to amend the Deccan Agriculturists' Relief Act.* No. 15

The Bombay Government, it is said, has found difficulties "in the working of the Deccan Agriculturists' Relief Act, for the removal of which it appears necessary to make certain amendments in that Act." If the difficulties were mere casual and removeable obstructions impeding the operation of a measure obviously sound and beneficial in its general effects, it would of course be desirable to clear away those obstructions, and to rest content with that. Principles correct in themselves may be perverted in their operation by a faulty method or by hampering accompaniments, freed from which they will exercise a purely beneficent influence. When this is the case in any particular branch of a legal system, there will

generally be indications from which we can form a tolerably safe induction as to where the mischief lies. But if, on the other hand, the central principles themselves are in fault, no mere adaptation of subordinate means can repair their defects. It may happen even that the very perfection of the subsidiary rules will only increase the evils of a system radically wrong; but at the best nothing better can be hoped by mere amendments than the removal of gratuitous aggravations; some slight alleviation or disguise of evils which remain evils still.

2. Judged according to a standard of this kind, the amendment, by which it is proposed to make the Deccan Agriculturists' Relief Act finally effective, seem of but trifling value or of none at all. It is proposed to strike out the definition of Agriculturist contained in the Act. The meaning of the definition as it stands has now been ascertained by judicial exposition, and if the view taken by the High Court differs from the intention of the Legislature, a declaratory clause would correct the defect of language which has caused misapprehension. But to leave it to the local Government to declare from time to time who shall and shall not be agriculturists under the Act, must spread uncertainty and distrust wherever the Act operates, or by any possible construction can be supposed capable of operating. At present, if I am rightly informed, the interchange of capital between the moneyed class and the landholders is almost brought to a stand-still, owing to the uncertainty of the lenders being able to enforce his rights. Give a wide uncertain margin to the class of agriculturists by making it depend on the varying policy or predilections of the executive, and the existing paralysis will creep over another quarter of the social body. New forms of misery arising from extending poverty will as usual cause a fresh outcry against the symptoms rather than the root of the disease until the climax of a false system is reached in the restoration of the rule of pure arbitrariness.

3. The amendment proposed in section 19 is one of mechanical correction. There can I should say, be no objection to it while the Act generally is maintained. The only remark that occurs is that the section might be a good deal condensed.

4. The proposal to qualify police patels for the office of conciliators is highly objectionable. The patels are almost all illiterate. They are for the most part in debt; they generally have extensive local connexions. They exercise a formidable influence through their local police jurisdiction for, petty as that is, it puts into their hands the means of inflicting great and perpetual annoyance. The patels now employed as village munsiffs are said to be sometimes slaves of the sawkars, frequently tools of the kulkarnis, who act as their registrars. They are said to be biassed by factious feelings, and to invite nearly all the litigation of which they dispose. The so-called conciliator has powers placed in his hands which are capable of great abuse; they should not be given to a man already so strong, so poor, and so hard to reach as the police patel.

5. The meaning of the proposed amendment to section 56 is, I suppose, that the section shall not apply to any instrument executed by an agriculturist only as a surety. If that is so, it would perhaps be better to say so. It will be well to consider in connexion with this section the proposed authority of the local Government to make and unmake agriculturists for the purposes of the Act. If many changes of description take place, it will be impossible almost for any one to know, after some years, whether a conveyance or mortgage was executed by a person who, at the time, was or was not an agriculturist. Great uncertainty may, in any case, arise under section 60, which has but a limited and arbitrary operation, but that is no reason why the mischief should be aggravated.

6. In sections 57 and 58 the desired end would apparently be attained by inserting the words "executing" and "said" before "parties."

7. Under section 71 of the Act and its retrospective declaration that all instruments affecting land of an agriculturist are compulsorily registrable, a mass of rights arising from the legal precedence of conflicting instruments has already come into existence. What is to become of these rights? Are people who have recently brought or taken mortgages on the faith of there being no claims superior to those they were acquiring, to be postponed to any holder of an instrument brought in to be marked by the holder under the proposed amendment? Section 71 as it stood was a harsh and embarrassing enactment, but the proposed amendment will produce endless confusion and litigation. Provisions should be made for the cases of conveyances between November 1880 and November 1881, with and without possession, for property held jointly by agriculturists and non-agriculturists, and for variance in condition of the grantors between the earlier and later deeds.

8. The proposed amendment of section 72 makes the sense clearer, and is so far an improvement. But the whole principle of different periods of limitation for different classes

of debtors is wrong, and, like all wrong principles, it leads to unjust and absurd results. The High Court has ruled that an agriculturist, sued as a surety, may be sued after any time short of twelve years, though in favour of the principal debtor not an agriculturist limitation operates in three years. But then the surety gains a new cause of action against the principal who is thus suable for at least fifteen years after the original cause of action arose instead of three. It will thus only be necessary to make some agriculturist man of straw a surety to obtain a twelve years' extension of the limitation in every case in which the Legislature intended it to be restricted to any shorter term. If the discretional power of the local Government in defining an agriculturist is to be introduced, the limitation should be expressed as relating to the case of a debtor being, when the cause of action arose, an agriculturist "as there legally defined for the purposes of this Act."

9. The Act, which it is proposed to amend, has now been in operation for a year and-a-half. There has been time to judge, in some respects at any rate, how far its results correspond to the sanguine expectations with which it was launched. "The problem before us," it was said, "is how to keep the money-lender in his place to encourage and support him in all useful function. . . . We must foster due credits. . . . We must hold the rayat responsible in our courts for what he has really borrowed not for what he has not; and make him repay by his own exertions all that he reasonably can repay, not set him free by sudden, one-sided or heroic remedies to enter on a fresh career of indebtedness." Now, unless the general opinion is wholly mistaken, the most conspicuous consequence of the Act has been to oust the money-lender from his place by means of a one-sided remedy which has extinguished credit in making the rayat irresponsible. The whole class of those who furnished capital to the cultivator have, with a very few exceptions, closed their business, and, except when retained by the hope of recovering some portion of the money due to them or by imprisonment at the suit of their own creditors, they intend to leave the district. Where the money-lenders have bought land or lent on mortgage, an early retreat is impossible, but their former function is no longer performed. As regards the ordinary rayat, the Act, by which it was said, "We must foster due credit," has simply extinguished it. The pressure of this annihilation of credit is as yet hardly felt. The harvest of last year was unusually abundant, and the rayats, not frittering away their fortunes in paying their debts, are revelling for one year in a fool's paradise. A single bad season will bring them to ruin; and even without a bad season their funds will, in three or four years, have been as much consumed in waste as if they had paid their debts. The difference will be that the creditors having been in many instances impoverished, and having in all cases become distrustful, the rayats will be without any resource to tide them over the first time of adversity.

10. The principle having been formulated that "we must hold the rayat responsible in our courts for what he has really borrowed," effect was given to it by inviting every agriculturist debtor to deny his creditor's claim. The duty was imposed on the Court of "going behind the bond" of searching amongst bygone transactions of years ago evidence of which would for the most part not be forthcoming for any excuse that might be made for repudiation. Even when the claim is admitted by the debtor, the Court is generally bound to enter on this inquiry. It is only in special cases, where the Court can record in writing that the debtor has a full "knowledge of his legal rights," that the retrospective scrutiny can be dispensed with. What cultivator has "a full knowledge of his legal rights"? What legislator for that matter would undertake to define those rights? The Subordinate Judges understand, as no one could fail to understand, the purpose of such provisions, and what they are expected to do under them. They cannot but be in some measure demoralized by the lopsided equity which they are commanded to exercise. The debtor himself is directly and pressingly invited to dishonesty. He may gain but cannot lose by a lying story. An honest admission of his debt is not received. The creditor, who had for fifty years been told by the express words of the Bombay law that his bond secured him except in case of unfair dealing, and who having his bond had thus been invited not to preserve the evidence of earlier transactions, is suddenly called on to prove that at no stage of what may have been an hereditary series of transactions can any imposition have been practised on the debtor or the debtor's ancestors. The appreciation of the remote and obscure facts is assigned to a class of Subordinate Judges, imbued generally with the prejudices of an impecunious class, with promotion to earn, and with everything urging them to demonstrate the usefulness of the Act, the wisdom of the Government, and their own efficiency, by rejecting or cutting down the claims of the money-lenders.

11. The Courts, however, are not merely invited to do injustice; they are compelled to do it. The rate of interest agreed on by the parties, and on the assurance of which the creditor has himself probably borrowed, must be set aside and replaced by such a rate as the

Court may think reasonable. The law affords no standard to the parties or the Judge. Compound interest is not to be allowed though the rate may have been settled in perfect fairness with reference to annual rests. The common contract for setting off the profits of mortgaged land against interest is to be annulled. Though the account may have been repeatedly made up, and the creditor may most properly have reckoned the sum ascertained as due amongst his assets, and as a security for his own borrowing, yet every such settlement is in general to be set aside. Thus the creditor, holding a field in lieu of interest who has never been called on to keep accounts under a mortgage, is charged with profits according to the mere guess of a Subordinate Judge wholly ignorant, as a rule, of all agricultural business. The reasonableness of a rate of interest, stipulated for perhaps before the Subordinate Judge was born and determined by considerations which it is impossible after several years to weigh with accuracy, is similarly left to mere unskilled conjecture. Special reasons must be assigned for allowing a settlement of account made even twenty years ago. The annual rests, universal in mercantile business, and to which the sawkar himself has to submit, are absolutely forbidden between him and his debtor. The sawkars, in immediate contact with the peasantry, work almost invariably on borrowed capital, like the merchants and manufacturers of England. No arrangement could be better for drawing capital to the points where it is most needed, and can be applied with most benefit. But the economic principle embodied in this law is such that the intermediary, who lends at a moderate advance on the interest that he himself pays, and for any periods approaching those contemplated by the new rules of limitation, must needs be a loser. A village sawkar lending at 10 per cent. might reasonably borrow at 8 per cent. He would thus realize 25 per cent. profit on the interest, and extending his business to the amount of five times his own capital, would double his income. This, or something like this, is what has been done in past years, allowance being made for varying rates of interest. But now the sawkar who has lent R100 for ten years, whether at 10 per cent. or any higher rate is pronounced entitled at most to R200 without a possibility of his claim rising any higher, while at 8 per cent. with annual rests on the same sum borrowed by him he has become indebted about R216. At the end of twelve years, the new period of limitation, his debtor will owe him still R200, while his own debt will have risen to R252.

12. Could anything be devised more certain than this to check the flow of capital? Under such a system, honesty and moderation must result in loss. The injustice of the law, however, is for the future perhaps tempered by its weakness. It can be most readily evaded by those who from the first are acquainted with it; but for those who sue on past transactions, it admits of no mitigation. The sawkar is not only subject to have the worst construction put upon every transaction of the past, but if he has dealt fairly and reasonably, he must often be robbed by means of the Court. To such a certainty as this, he prefers the chance of what, through importunity or the foresight of future necessities, the debtor may be induced voluntarily to yield to him. To "hold the rayat responsible for what he has really borrowed" in such a sense as this is a mere sham.

13. The statistics of the Courts show conclusively that the idea of recovering debts from agriculturists through legal proceedings has been abandoned in despair. From 36,000 the suits in the Deccan Districts fell in one year to less than 12,000, and of these only about 2,600 were suits against agriculturists. As the Act bears almost solely on this class of suits, it may be inferred that, in fact, only about one suit has been brought out of nine or ten that might have been, and but for the peculiar provisions of the Act would have been, brought against agriculturists. But 1880 compared with 1879 was a prosperous year. Had there been no special legislation, the number of suits would naturally have increased very largely. Of the 2,600 suits a large proportion can be accounted for by special reasons. It is obvious then that the money-lenders have virtually been scared out of the Courts. As regards them, the Government has imposed terms on the exercise of its power which constitute a practical abnegation of its functions. It fails in effect, whatever its intentions were, to afford that protection to the ordinary transactions of human beings which is essential to any advance in prosperity and even to the prevention of a decline.

14. According to an arrangement, not very uncommon in India, the number of officers employed was made to vary in a sort of inverse ratio to the work to be done. While the suits diminished by two-thirds, the Subordinate Judges were increased by one-third in number. One of the new Courts, in the course of six months, seems to have succeeded in attracting 38 suits. The best patronized received 252. The Government eventually suppressed seven of the twelve additional Courts. The contrast between what was expected and what really occurred is very striking. It shows conclusively that creditors of agriculturists decline to go to the Courts, and that, in fact, we do not hold the rayat responsible for what he has really borrowed. Even when

a decree had been obtained against him before the Act was passed, sections 19 and 20 allow it to be made quite ineffectual. In a dictum which has been frequently quoted, Sir B. Peacock on one occasion said that a creditor's main difficulties began when he had obtained a decree. These difficulties arose from the family system and the laws of property of the Hindus, and from the general untrustworthiness of native testimony. In the new Code of Civil Procedure an endeavour has been made to secure reasonable certainty and promptness in the execution of decrees, but here the Legislature steps in to punish the indulgent creditor for his forbearance and prompts the debtor, already once adjudicated as such, to go into the Court and fight the battle of falsehood, fraud, and evasion over again. The sawkars are powerless to remedy the past, but who for the future will lend money on such conditions, and how can enterprise obtain the requisite aid when an ordinary loan is made one of the most hazardous of speculations?

15. Under section 16 of the Act a debtor, who suspects that he has been overreached or unfairly used, may sue for an account and get his debt settled by the Court on the principles already discussed. Yet only 267 suits of this kind were brought in the year. This small number would have been much less only for the remission of stamp duty which enables a debtor now to take a chance of getting rid of his liability, or part of it, and to impose trouble, expense, and loss of time on his creditor without himself standing to lose anything at all. It may be probable that there will be many more suits of this kind, in which the advantage is all on the side of the plantiff; but the paucity of such suits hitherto indicates that there are comparatively few cases in which the agriculturist-debtor feels that he has been grossly wronged. This confirms the significance of the falling off in the number of small suits by sawkars. In about eight or nine out of ten of those suits the defendant used not to appear, which might, on the ordinary principles of human nature, be thought to show he was aware he had no defence. Such principles, however, being thought inapplicable to the case of the rayat, he is now compelled to appear. This is considered a great hardship, especially after having had to appear already before the conciliator, but having appeared, he in three cases out of four does not dispute the claim. He would probably not dispute the claim in more than one case out of ten only for the demoralizing temptations held out to him by the law.

16. The humblest class of debtors, those sued before the village munsifs, are excluded from the privileges given by the provisions just discussed. It might be supposed that the poorer the debtor the more he needed special protection, but no doubt an illiterate patel is not the person to administer a puzzling equity. The sawkars, however, should the Act remain in force, will find means to break up all their claims of small amount into smaller fragments so as to bring them within the village munsif's jurisdiction if it suits them to do so. That is, the remnant of them who are left in the district will do this. That remnant will consist of the most cunning and knavish cormorants of all their tribe. The experience of Europe with regard to the Jews in the middle ages ought to be proof enough that oppression and unfairness to unamiable creditors is effectual only in exterminating the more respectable and moderate of the class. The residuum, who can live only by evasion of the law, give full indulgence to their natural rapacity. They are met by a want of principle equal to their own, and in the strife of fraud, capital perishes or emigrates to some region where it can live and grow in the open day. The consequence of driving out money-lenders must almost everywhere be an increase in the number and the exactions of the petty shopkeepers, from whom the rayats, deprived of the means of going into a larger market, will be forced to buy on credit, and at extortionate prices, all the supplies of their daily necessities.

17. The provisions of section 22 for the management of a judgment-debtor's land by the Collector for seven years have not been acted on. How could they be acted on? They are utterly unpractical. A seven years' lease at a rent equal to the Government assessment could be sold by the Court. If the Collector is to carry on the cultivation, how is he to look after fields scattered all about the district? And if, as would happen in nine cases out of ten, his farming ends in a loss, who is to bear the loss? The creditor does not want his management; the debtor certainly does not want it; therefore the Government, it would seem, must pay for the experiments. If a rayat's lands are to be attached at all, and so far as they are to be made answerable, the only practicable methods are by sale, incumbrance, or handing them for a given time to the creditor. The last course would not really produce much in most cases. Scattered lots of land cannot be properly looked after; but it would be better than the farming of the land by an official agriculturist, even one so versatile as a model Collector.

18. The advantages of the Chapter on Insolvency have been shunned alike by debtors and by creditors. It seemed *á priori* likely that a considerable number of debtors would desire to get themselves freed from the clogging burden of debts they could not pay, but the

sensibility on that point of the ordinary Englishman is hardly shared by the ordinary Hindu. The rayat born and brought up in debt accepts it as part of the order of nature On the other hand, he can hardly ever make up his mind voluntarily to part with his land. He shrinks, too, from any open repudiation of his debts, such as seems to him involved in a declaration of insolvency; hoping in a vague way that things will eventually come right, and fearing that his possibilities of credit for the future may be extinguished. The creditor, on the other hand, has but little to expect from the management by the Collector of such land as the debtor may have beyond what is necessary for maintaining his family. The process is too troublesome, complicated, and uncertain in its results. What is wanted is a simple call to all creditors to come in, a rather summary adjustment of their relative claims, and then a sale at an upset price of the highest sum offered by any creditor (1) of the moveable assets of the debtor, including all legal claims on his part against third parties, and (2) of his land and other immoveables in excess of what may be pronounced necessary for his support and that of his family. Each creditor with a decree in his hand, or knowing himself to be favoured by the debtor, hopes by pressure and good management to extract from him more than his own share of the debtor's property and gains; but the object of the Legislature should be to restore the debtor as soon as possible to society as a productive member working with a consciousness that the fruit of his labour is to be his own.

19. The most interesting part of the Act is that which relates to conciliation. It rests on a highly beneficial principle, but the machinery is essentially defective. The tribunals of conciliation which were, I believe, first employed in Holland were thence borrowed by France, Denmark, and other countries; and in all they have, on the whole, worked well. But in all the central idea of conciliation has been maintained, and the functions of the conciliators have been restricted to simple cases with which they were competent to deal. No evidence is taken by a conciliator on the Continent. He may look at the simple documents which only can be produced in the cases brought before him; but true to his purpose he hears only the parties in presence of each other, and tries to bring them to an agreement. He may put considerable pressure on the creditor by forcing him to attend again before granting a certificate, and he thus constrains him in many instances to make a large abatement of his claim. This the conciliators under the Act also can do. A remedy against any unfairness is to be found in a limitation of the proceedings before the conciliator to two appearances and a short interval between the two. The general result, however, of the conciliation system has, so far as I can learn, been all in favour of the creditor who knew how to use it. It has been described by a native newspaper as "like putting a knife into the hands of a butcher." This is no doubt an extravagant comparison, but it is obvious that a sawkar, having a friend for a conciliator and debtors as helpless as the rayats are assumed to be, may readily turn all the defences raised by the sections of the Act which empower a Court to "go behind the bond," and settle people's affairs in a way they never contemplated. He obtains an assent to a certain sum as due before the conciliator no less readily than to a renewal of a bond in his own shop, and the certificate thereon granted virtually shuts out further controversy. No cause can be shown why "the agreement," which the debtor must admit, "should not be filed," and once filed it becomes a decree.

20. It is no wonder under these circumstances that the applications to the conciliators should have been very numerous. The proceeding costs nothing; it holds out the only hope of fair treatment to the creditor; it is the only avenue by which in a suit against an agriculturist the Court can be reached. Yet the working of this elaborate machinery seems to bring matters in the main to almost exactly the same point they would be at without it. The 16,000 cases out of 29,000 in which conciliation was tried and wholly failed, represent the old proportion of contested suits quadrupled by the debtors having no costs to pay for an unconscientious defence. In a majority, perhaps, of these cases, litigation will have been fomented by the preliminary wrangle; the disclosure of the plaintiff's evidence before the conciliator will have stimulated the concoction of opposing proofs, and the improvement of the plaintiff's own case by the usual and well-known means. The withdrawals, defaults, and refusals to attend represent the former *ex-parte* cases. The agreements represent the former compromises. Certificates have been granted in nearly all the 9,000 cases in which the debtors failed to attend, and, if they are worth pursuing at the cost of court-fees, it may be predicted that very few of them will appear in the Courts, except under compulsion. In about 16,000 out of 29,000 cases the conciliation seems, as I have observed, to have absolutely failed; in 6,500 it seems to have ended just as an ordinary suit would have ended; in 6,800 cases it has led to agreements convertible into decrees, which agreements would in general have equally been made without conciliation.

21. The two advantages of the conciliation system are that in general the conciliator is rather nearer than the Court to the debtor's house, and that no court-fees have to be paid. On the other hand, the conciliators being scattered about at places not convenient for the class of creditors, the latter are harassed by repeated and too often fruitless attendances which interfere with other business so as to cause considerable loss. For this, the borrowers must in the end pay, if borrowing continues at all. When conciliation fails, as it does in the great majority of cases, the creditor's time and travelling expenses have been thrown away; the debtor has been deprived of three or four days earnings for nothing; and the witnesses, who have been prevailed on to attend, have been subjected to useless and vexatious harassment, if not to actual want. Either they must suffer, or the parties must be put to double expense in bringing them first before the conciliator (perhaps repeatedly) and then before the Court. The final disposal of the case, wherever there is a real contest, is postponed by the whole time spent in non-conciliation, and the debtor is encouraged by the gratuitous procedure to procrastinate in the preliminary investigation to the utmost limit of the conciliator's patience. These delays are harassing to the creditor, and cause him to abandon many a claim which is perfectly just, or to accept what the debtor offers rather than risk more time and money upon a hazardous speculation. The remission of court-fees could as well have been made in the ordinary Courts as in those of the conciliators. These Courts had not too much to do. This method of arbitration involved less labour than that of a complete contentious investigation. By exempting from court-fees those who would lay their cases before a Subordinate Judge and accept his disposal of each according to his first impressions—as likely almost to be right as his final opinion derived from a mass of counterbalanced falsehoods—all the good of the conciliation system would have been obtained with the further advantage of a mind in some degree skilled and disciplined being brought to bear on the problems submitted for solution. An honest exercise of a higher intelligence would have been ensured as far as possible by the Subordinate Judge's professional feeling and his interest in his official character. The conciliators have nothing to lose. There is a difficulty in making those, who are even moderately qualified, retain so irksome and thankless an office. Any strong desire to retain it would give rise to unpleasant suspicions. It is only retired servants of Government, such as pensioned chief constables and the like, who in general present even a show of competence; and their efficiency may be placed about on a par with that of retired constables or sergeants of police in England. In the meantime the Courts are kept idle: the qualified judicial officers are superseded by these amateurs, who, even with the best intentions, must often lend their aid to grievous wrong.

22. The good intentions, however, of the conciliators are hardly less often questioned than their abilities. Those who are in business are suspected of being influenced by trade prejudices. Those who are poor, are suspected to be amenable to influence. Those who are better off, are not credited with the requisite patience and forbearance. They are in many instances connected in some way with the creditor. I do not gather from the information that has reached me that the conciliators have as yet lent themselves in any appreciable degree to positive fraud, but many agreements have been made before them on bad or doubtful claims. For a further advance of a few rupees an improvident rayat, I understand, is just as willing to go before a conciliator and make an irrevocable admission of a claim as to sign a fresh bond. The advantage of this to the creditor is obvious. Honest lenders are forced to it by the harsh provisions to which they are otherwise subjected; dishonest ones thus shielded obtain a ratification of their knavery. The fresh advance can be kept back or dealt out in driblets until the agreement filed in the Court has passed beyond question, and become a security, from which there is no escape for the debtor. "Honesty is the worst policy" should for the present replace the old-fashioned maxim in all Marathi copy books.

23. There have been several dismissals of conciliators. There have been many resignations of the office. To some extent this must have occurred under any new scheme of agency, but it is plain enough that suitable men are very hard to get and yet harder to retain. In any other country the average conciliator under the Act would seem ludicrously unfit for the delicate duty of deciding off-hand upon all the civil disputes of a community. The appointment of Subordinate Judges as conciliators to which the Government have apparently been driven by an absolute lack of other presentable men, shows the direction that reform should have taken from the first. Continued attention and labour have at last produced in this Presidency a class of Subordinate Judges whose merits are one of the best monuments of the British rule. In them, with very few exceptions, the people have perfect confidence. It was proposed several years ago in Sind, and possibly elsewhere, to vest them generally with a conciliatory jurisdiction. It would seem that a settlement of disputes, without the expense

and the heart-burnings of litigation, carried to the last extreme is as desirable for other classes as for the cultivators of the soil. The Subordinate Judge is the most cultivated, balanced, and reasonable man who can be had for this function. He knows the law, and he is free from local connexions and local prejudices. He could do all the work, would do it far better than the unprofessional conciliators and under a stronger sense of responsibility. Why should he be kept idle or made a mere registrar of the conciliator's decrees, while they do the work for which he alone is fit? It is a strange instance of "the tools to him who cannot use them." So far from the rayat benefiting by the substitution of unskilled for skilled investigation, I believe the result has been exactly the reverse. It requires a much higher intelligence to apply equitable principles than to exact the literal fulfilment of an overreaching contract. The view taken by the people is shown by their going to arbitration in only 21 cases in the district of Poona in the whole year. If there were any want of confidence in the Subordinate Judges, it is impossible but that more cases should have been withdrawn from their adjudication.

24. The village munsifs appear to be an institution of very doubtful utility. It is commonly supposed that they encourage the petty suits in which they have jurisdiction for the purpose of acquiring influence. It is certain that nearly all the litigation brought before them would be no litigation at all in the absence of their jurisdiction. The patels are themselves in many cases in debt or their relatives are in debt to the suitor. They are mixed up in local factions and swayed by personal prejudices. The narrow range of their lives makes this inevitable. They enforce the claims of village shopkeepers on village customers, and so extend the practice of giving credit and living on credit; but with the class of rayats they have little or nothing to do. By-and-by no doubt the money-lenders, should there be any left, will learn that it may sometimes be advantageous to split up a rayat's obligation so as to bring the several parts within the jurisdiction of the village munsif. An assistant will be at hand in too many cases, ready to join in any scheme for evading the law and defeating justice. The patels of the Deccan are almost always under the thumb of the kulkarnis, who are recognized as the most intriguing set of men in the Presidency. Under the present able and vigilant superintendence the jurisdiction of the village munsifs may sometimes be beneficial; without that safegaurd it may become a tyrannous abuse.

25. The system of universal registration of obligations provided by the Act was expected to put stop to nearly all frauds by sawkars on the rayats, by its rules for the authentication of all obligations. And this end has, it would seem, been generally attained, so far as bonds to money-lenders are concerned. I have heard of bonds registered before they were signed, of bonds attested by persons quite unacquainted with the nominal obligors, of payments endorsed as made which were really not made in presence of the registrar, and of sham payments of money which was handed back again outside the door. The registrars being generally of the kulkarni class may possibly be turning their opportunities to account; and after eight or ten years under the extended term of limitation now provided, properties may be claimed and gained on documents that have never been executed. It is too soon to speak with any confidence on that point. One precaution, however, is obviously possible which has not been taken, and that is, to send to every village where property lies, the subject of any registered document, or where the executing party resides, a statement that a document executed by that person has been registered. This, published in the village chauki, would inform the villagers of all deeds attributed to them which had been registered. After a week or so the paper could be sent on by the police to the registrar of the district to serve as a check on the village register.

26. Had some such plan as this been prescribed by the Act for making rayats aware of all deeds registered against them, the appointment of village registrars with peculiar temptations to go wrong and very little registration to do might have been dispensed with. As matters stand, the services of the village registrar being required only occasionally, are not always available when wanted. The delay costs money. The sawkar exacts a fee for going or for sending his representative to the village registrar. The registrar usually exacts a trifle for promptness. The witnesses must be paid something for their signatures. It is estimated that a rayat gets, when the sawkar behaves honourably, about R7 or 7½ out of R10 for which he binds himself. A discount of 25 or 30 per cent. is a heavy burden to start with. It is more than equivalent perhaps to the gain by local registration, attended as this is by dangers from which registration at central stations is comparatively free. But, moreover, the compulsory registration of every petty transaction tends to increase both debt and the comparative burden of debt. The usual mode of borrowing is not by considerable lump sums at pretty long intervals. A rayat takes five rupees when he wants them. He is often

persuaded by the sawkar to manage with three when he asks for five. Now under the Act the sawkar cannot lend him t hre rupees or even one rupee safely without an acknowledgment requiring registration perhaps several miles off. If the lender trusts to the borrower's honour, he runs a risk for which the honest borrower pays a disproportionate premium. If he is not disposed to run this risk, he exacts payment for going or sending to the registration office, and the borrower, as he has to pay so much, is tempted to borrow more in order to save a renewal of the expenses of registration. The money once borrowed is soon spent, too often with but little to shew for it, and the borrower is paying interest on money that he did not want and on expenses that he needed not have incurred, except for the costly protection that the Act throws round him. The advantage is not, all round, at all equal to the cost. All that was required was a supplemental section to the Registration Act, providing that the name of every executing party to a deed should be sent to his village and there published for a week in some such manner as I have suggested. At present sawkars, hampered by the provisions of the Act, sell goods in many instances, instead of lending money, or they buy for ready money a definite quantity, or an aliquot part, of the rayat's growing crop. It is not proposed to prevent his selling it in advance. But it is surely useless to stop up one door if another is left open, and the more circuitous the transaction the more in the long run the illiterate rayat loses by it. When he is pretty well involved and wants R10 more as a simple loan, the time has come for him to be "conciliated," and then he is at the mercy of the sawkar.

27. The evil of a compulsory scheme of registration for every petty loan is, that it interferes injuriously with the free play of supply and demand. In the case of assurances affecting land, even in small parcels, registration may properly be insisted on, because the land is permanent and substantially invariable; but with regard to dealings in money or fungible articles infinitely divisible, variable, losing identity almost in a moment, an entirely different principle holds good. In such transaction registration should be simply optional. The lumbering process of registering every petty loan of a retail banker is quite inconsistent with the free and rapid circulation which makes a smaller capital perform the work of a larger, and which is absolutely essential to economical progress. The objection to hampering business with superfluous or odious formalities applies, though in a less degree, to the provisions of Chapter IX for keeping and furnishing accounts. A debtor has a right to an account at any time from the creditor whom he desires to pay, and that is enough for all useful purposes. Knavery can pervert the provisions intended as a safeguard of the simple rayat into an instrument for his ruin.

28. Placed as they have been at such a disadvantage in the Courts when suing to recover loans even in mortgage, the sawkars have in many instances, I am informed, bought the property of cultivators instead of lending on it. Every transaction of this kind induced by the Act has been a defeat of its avowed purpose. It was not the object of the Legislature to convert indebted yeomen into pauper labourers In some cases, I understand, the purchase has been made on an understanding for re-sale whenever the rayat may be able to repay the sawkar his purchase money *plus* a certain premium. This obviously leaves the peasant entirely at the mercy of his creditor, but in practice a condition of repurchase is hardly ever insisted on, except in the case of some extraordinary increase of value. The purchases of lands by sawkars would have gone immeasurably further than they have, only for two causes. One is the impossibility of looking after small properties scattered about a taluka; the other is the almost impossibility of getting honest tenants of such properties. If a rayat has means, he can readily obtain some holding which another rayat desires to resign or one unoccupied. If he has no means and becomes a tenant, his landlord has to make advances on the Metayer system; and then the chief object of the rayat's existence seems to be cheating his landlord. He makes away with money given to him to buy labour and necessaries for the farm; he steals away part of the crop to diminish the landlord's portion; he neglects preparation for the next sowing, and perhaps ends by absconding in debt at a time when the landlord can get no other tenant for the current year. A moral reformation here, as in so many cases, is the necessary preliminary to an economical improvement; and the resources of the land must lie comparatively undeveloped until the people can work together on a basis of honesty and mutual confidence. But though the causes I have mentioned must prevent any such accumulations of land by the sawkars as would otherwise take place, the impediments put in the way of mortgages will lead transfers amongst the members of the cultivating class itself and a gradual agglomeration of the fertile lands in fewer and fewer hands,—the hands of men with some innate vigour of character and not prevented by caste from putting muck on their fields. The lot of the ex-owners will probably be harder as tenants-at-will, or servants of their former equals, than if they had been let alone by the law. To such a "peasantry . .

expropriation means discouragement, despair, and exasperation;" and yet expropriation is their inevitable lot, unless capital is placed within their reach as borrowers on terms of sufficiently wholesome strictness to the individual to prevent his repudiating his obligation at the cost of his creditor first, and ultimately of the community. What credit requires is organization, not extinction. The Act tends to its extinction, except where mingled with trickery and fraud, but, as was said in introducing the Act, "when we overturn by an Act of the Legislature institutions which popular consent has maintained for above a score of centuries, we sometimes forget that we are not the bearers of political revelation from heaven."

29. By the provisions of Chapter X of the Act, legal practitioners are excluded from the Courts, except on a special permission from the Subordinate Judge. The lower order of pleaders are no doubt a cunning and intriguing set of men, like the lower order of attorneys in England; but the mischief of excluding all pleaders, good and bad, from the Courts far exceeds any advantage to be gained from it. I have almost invariably found that the more intelligent the officer the less prejudiced he was against the pleaders; their bitter censors are the men whom they pose by their acuteness or offend by their independence. If a Subordinate Judge, or any Judge, is master of his business, the performance of his work is very greatly accelerated by the aid of advocates who have previously studied the cases. In the trial of pauper suits, now that by a most false economy the attorney for paupers has been abolished I find in the High Court what I formerly found in a District Court, that the animosities misconceptions and general obtuseness as to legal principles of ignorant litigants are by far the most serious practical impediment to arriving at truth and justice. The party in person not only wastes time outrageously, but he presses arguments that are plainly illogical, and resorts to shallow artifices, familiar to every one having Court experience, such as no pleader could descend to. If found out in a lie or a false suggestion, he is not really ashamed of it. There is no diffused moral sensibility on such points amongst the class of litigants, while amongst the pleaders it has, at least in the forensic sphere, been developed to a practical and beneficial extent. A pleader, however ill-disposed, dares not practise any knavery before a competent Judge, in the face of the ruinous penalties which the law provides for professional misconduct, but the present generation of pleaders need but little severity of external discipline. Their steady conduct and self-respect and mutual control are such that it was superfluous to legislate against them. The discretion given to the Subordinate Judge of allowing pleaders to be employed places them too much under his thumb. They ought to owe him nothing but personal and official respect. All useful purposes would have been served by giving a discretion to disallow costs in petty and simple cases, and the suggestions and manœuvres of unprincipled men outside the Court are not prevented by shutting their mouths inside the Court. The fraudulent claim and the lying defence can still be dictated, and in the absence of skilled interrogation are much more likely to pass undetected, than under a free system. The creditors complain that their time is consumed and their business injured by the necessity imposed on them of attending the Courts in person for every petty suit they file there, and between the conciliation and the procedure in Court, it is obvious that the loss must be so serious as would of itself serve to deter the sawkars in many cases from granting small loans to those who most need them. The creditor may for "cause shown to the satisfaction of the Subordinate Judge, conciliator or village munsifs," be represented by a dependent who has not been a pleader, but how can he tell beforehand what will seem "reasonable cause"? and how is he to show reasonable cause without attending to do so? The stamp-duty on the authority given to substitutes has been remitted, but, except so far as pleaders write by the hands and speak through the mouths of these agents, the whole process is an unpractical supersession of efficient by inefficient agency through a dread of collateral mischiefs about as well-founded as that of the anti-vaccinationists.

30. If the objections, urged against the Deccan Agriculturists' Relief Act not by speculative theorists but by people personally acquainted with its working, rest, as may fairly be assumed, on a foundation of fact, the best amendment of the Act would consist in its total and immediate repeal. There is, however, a natural tendency to exaggerate the evils of anything which is in comparison with what might be, and if the English have not been able to communicate any other of their own characteristics to the people of India, they have at least found them apt pupils in the art of grumbling. The truth seems to be that the Act contains some germs of good, long ago recognized and recommended by persons experienced in the working of our judicial system, but mingled with many evils and with some absurdities. Experience has been too little relied on; good will has been too much assumed as a sufficient justification for a policy of social revolution; an arrangement of small artifices has been thought sufficient to overcome the ingrained habits of ages. There is everywhere manifest

not only a want of insight into the larger conditions of human conduct and action, but a defect of practical grasp, unacquaintance with those narrower conclusions in which wisdom is embodied without reference to systematic politics. Such at least are the complaints of many who desire and deserve a careful hearing. Before the Government is finally committed to the Act and the system it embodies; before new interests have grown up under it to be the grounds of new complaints in the event of any change, it seems desirable that there should be a searching and impartial inquiry into the actual working of the measure. Such an inquiry would probably reveal some weak points: if it disclosed but few, it would immensely strengthen the general foundations of the Act, or at least our right to confide in it. To be searching, the inquiry should be made by persons of special knowledge. To be impartial, it should be made by men of independent character. For both reasons, it should be committed, as far as possible, to people not employed by the Government, or committed to its policy.

HIGH COURT, BOMBAY;
The 23rd July 1881.

RAYMOND WEST.

From DR. A D. POLLEN, Special Judge under Act XVII of 1879, to the Honourable C. GONNE, Chief Secretary to the Government of Bombay, Judicial Department,—No. 366, dated Poona the 9th July 1883. No. 15

I have the honour to submit a short note on certain portions of Mr. H. Woodward's report on the operation of the Deccan Agriculturists' Relief Act.

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*Note on Mr. Woodward's report.**

1. I have carefully read and considered Mr. Woodward's report, with the result that I find in it but little that seems to call for special observation from me. Most of the topics treated of by Mr Woodward were fully discussed in my last Administration Report, No. 203,† dated 31st March 1883, and his conclusions, as summarized in the 23rd paragraph of his letter, do not differ materially from those which I sought to put before Government in the 65th paragraph of my report. A comparison of the two paragraphs will, I think, bear out this remark. The essential verdict in which we both concur is that the Act has to a great extent accomplished its main purpose—the relief of the indebted Deccan rayat from a condition of thraldom, which has been the subject of reiterated complaint from officers of Government from almost the earliest beginnings of British Rule—and that too without entailing the wholesale destruction of credit, which some critics prophesied would be the inevitable result. The effects which the remedial measures provided by the Act were intended to produce are thus described in one of Sir Richard Temple's minutes (Government Selections No. CLVII, page 34): "They will make the rayats more careful in borrowing, and the money-lenders more chary in lending. They will diminish the rayats' credit without altogether destroying it, and they will certainly stop many cases of hard injustice which now continually occur under the very shadow of our Courts and which naturally exasperate the people." That they have effectually succeeded in bringing about the wished-for results will, it is hoped, be abundantly evident to Government from a persual of Mr. Woodward's letter and my own periodical reports on the operation of the Act.

2. Mr. Woodward's report needs to be read and viewed as a whole, before the significance of his ultimate conclusions can be fairly and fully realized. He has been so anxious to weigh all the *pros* and *cons* of the matter, to lay bare what seem to him the defects as well as to bring out the good points of the Act, that it is sometimes difficult to reconcile his conclusions with the reasonings or assumptions on which they appear to be based. Here and there occur isolated sentences and expressions which would seem to convey an impression distinctly opposed to that which, judging from his final paragraph, I understand him as wishing to convey. In dealing with a subject which presents so many and so varied aspects, and which so readily and naturally lends itself to discursive or imaginative treatment, it is difficult, in the attempt to generalize, to avoid falling occasionally into apparent inconsistencies. The effects from one point of view strike the observer as eminently beneficial and salutary; but shift the stand-point, and it is only the shortcomings and the dangers that stand out in strong relief.

3. The opening paragraphs of Mr. Woodward's report are devoted to a somewhat diffuse description of the rayats and the sawkars, their mutual relations, the ignorance of the former, the signs of improvement in their condition, the increasing tendency to thrift and co-operation amongst them, the feelings of the sawkars with respect to the Act, and its effect on money-lending generally—on all of which subjects I have so often expressed by own views that it seems needless to go over the same ground again especially as no well-defined or universal conclusions are at present capable of being established. In his 10th paragraph I think that Mr. Woodward has somewhat overstated the difficulties which stand in the way of money-lenders

* Printed on pages 335 to 357.

† Not printed.

recovering a debt found justly due. My contention is that if a judgment-debtor possesses the means of paying a debt, he can be compelled to pay it. If he has not the means, the creditor is himself to blame. Blood cannot be got out of a stone. It cannot be regarded as a subject for regret that the law no longer permits the debtor to be turned into the bond-slave of his creditor; that it no longer sanctions the squeezing process whereby an old debt can be transmuted into an annuity payable by the debtor from generation to generation, the rayat being thus kept in a perpetual state of indebtedness and serfdom. The exemption from attachment and sale of an agriculturist's land, house, necessary cattle, and implements of husbandry has been deliberately sanctioned by the Legislature in pursuance of a settled policy: but the debtor's crops and other kinds of moveable property can still be attached and sold. If he tries to make away with property liable to attachment with a view to defeat his creditor, the law provides a remedy by means of injunction and attachment before judgment. No reliable deductions can be drawn from the statistics of proceedings in execution. The small number of decrees executed through the Courts affords no satisfactory test; for it is and always has been the custom for creditors to execute their decrees *privately*, whenever they possibly can: they only apply to the Courts when all other means fail. I am wholly unable to agree with Mr. Woodward, when he claims to have proved that the sawkar is practically debarred by the Act from resorting to the courts. I search in vain the many sentences which compose his paragraph for the necessary proof. The sawkar who has lent money to a man of no substance and no credit, in the expectation of being able under the old system to extort petty sums from time to time by threats of imprisonment or ejectment, naturally hesitates now to come into Court: but I can find no evidence to show that, as a class, money-lenders are scared out of the Courts. I would refer to my annual reports for the last three years as affording ample proof to the contrary. I would also refer for purposes of comparison to the statement relating to execution of decrees in the General Administration Report for the whole Presidency, from which it will be seen that the number of decrees disposed of by full or partial satisfaction is insignificant when compared with the number shown under the heading "wholly infructuous," a circumstance which tends to show that a large majority of decrees, even after applications to execute them are presented, are settled somehow or other by private adjustments out of Court, and not through the active instrumentality of the Courts; and that in this respect the Deccan Districts are no exception to the rest of the Presidency. Some of the remarks and suggestions in the paragraph now under notice seem to me to be founded on an imperfect apprehension of the practice and procedure of the Civil Courts, but as the points referred to are of comparative unimportance, I need not dwell upon them in this note.

4. In his 11th paragraph Mr. Woodward alludes to the decrease in litigation, which he thinks is greater than I have allowed it to be, even if the cases settled by conciliation be taken into account. I am ready to admit that all the cases disposed of by Conciliators cannot be regarded as intercepted suits: some few agreements are occasionally effected on claims which would not be admitted in the courts, but such cases are extremely rare; for the Conciliators have been expressly instructed not to encourage agreements based on doubtful or invalid claims, and their proceedings in this respect are closely scrutinized. Again, some agreements are effected on decrees passed before the Act came into force, but the deduction to be made on this account is very trifling, as such decrees are becoming fewer and fewer every day. Altogether an allowance of 10 per cent. will suffice to cover all conciliation agreements which cannot be regarded as intercepted suits. No doubt there has been a considerable decrease in litigation. Whether the decrease amounts to 20 per cent. or 30 per cent. is in my opinion a matter of comparative insignificance. The decrease is not a subject for regret or apprehension; and it may be readily explained on other grounds than the creditor's disinclination to resort to the Courts. One of the admitted consequences of the Act is that money-lending and money-borrowing have been greatly curtailed, and the decrease in litigation has a necessary connection with the drying up of sources from which it is fed. There is a great change, too, in the character of the litigation, which should not be lost sight of when considering all the bearings of the question. It is no longer the chief function of the Courts to manufacture *ex-parte* decrees, which were for the most part used, not as a means for the speedy recovery of debt, but *in terrorem*—to prolong indefinitely a condition of indebtedness. *Now* the Courts are principally engaged in settling *bonâ fide* disputes and in enquiring into the substantial merits of contested claims. The proportion of *ex-parte* decisions against agriculturists in money suits used to be nearly 90 per cent.: now it is less than 5 per cent. Most of the uncontested cases and of those in which the creditor and debtor wish to collude are now disposed of by Conciliators. When these circumstances are duly considered and allowed for, I do not think that the statistics of litigation can be relied on, as supporting to any considerable extent Mr. Woodward'

contention that creditors are pratically debarred from resorting to our Courts. It was part of the avowed object of the Act that unscrupulous creditors should be debarred from using the Courts as mere engines of oppression, as the report of the Deccan Riots' Commission conclusively proves they were formerly in the habit of doing. If the Act has attained this object, as I think it has, it may fairly claim to have been so far successful.

5. In paragraph 13 of his report Mr. Woodward dwells on the subject of "Tagai" advances and the advantages that may be expected to accrue from a liberal development of the system. I entirely concur in his remarks in this connection, and I have myself laid considerable stress upon this branch of the subject in my annual reports.

6. With reference to Mr. Woodward's remarks on conciliation, I would invite attention to paragraphs 39—54 of my report* for last year, in which the whole subject is thoroughly discussed, and all the procurable information is embodied. The only portion of Mr. Woodward's paragraph to which I need take particular exception is the sentence in which he says that "most of the existing Conciliators are esteemed neither impartial nor independent." The knowledge and experience I have gained during last 3½ years enable me to say that there are but very few of the existing Conciliators who are not esteemed both impartial and independent. We have now got almost as good a set of men as can be found in the country. See paragraph 51 of my last report.† No doubt the Subordinate Judges would be the most satisfactory persons to do this work, if they could spare sufficient time from their other duties; but at present few of them can spare the necessary time. The difficulties which Conciliators experience in getting their summonses served were explained in paragraph 54 of my report.

* Not printed.

† Not printed.

7. The continuance and extension of the Village Munsif system are questions on which I requested that I might be specially favoured with the orders of Government. I am inclined to agree with Mr. Woodward when he says that whether they (Village Munsifs) are abolished altogether or increased in number is a matter of general indifference, as far at least as the question of relief of agriculturists is concerned.

8. With reference to the other subjects discussed by Mr. Woodward, I do not think that I have anything to add to what I have already written in my annual reports; but if there are any particular allegations or suggestions as to which Government would desire fuller explanations or opinions, I shall be happy to submit a further report on whatever questions may be referred to me.

A. D. POLLEN,
Special Judge.

The 9th July 1883.

No. 1

Observations by the Honourable Mr. Justice WEST *on the Report of Mr. H.* WOODWARD, *C. S., on the working and effects of the Deccan Agriculturists' Relief Act.*

The first remark that occurs with respect to Mr. Woodward's report* is the want of special qualification in Mr. Woodward himself for the difficult duty assigned to him. He entered on the duty no doubt with the best intentions and with a more than average stock of intelligence—that is evident throughout his report—but his entire unacquaintance with the Deccan and its population must have prevented his forming any other than obvious and superficial views during his hurried tour of four or five months. As a stranger to the district Mr. Woodward was free from bias, but he was also necessarily devoid of the knowledge and experience which would place special inquiries on their requisite basis. It is not conceivable that in less time than an Assistant Collector usually needs for becoming tolerably acquainted with his own sub-division of a district Mr. Woodward should have acquired and placed in their proper mutual relation all the complicated and obscure facts which are involved in an inquiry into the state of the people and the working of the laws throughout an extensive tract of country. To make the inquiry committed to Mr. Woodward really fruitful and valuable, there should have been brought to bear on it greater experience, more varied knowledge and views taken from different standpoints, not merely those of the judicial or the administrative officers of Government, but of the trader, the banker and the rayat. The opinions of members of these several classes have no doubt been gathered, and impartially gathered, by Mr. Woodward, but it takes much prior insight to put searching questions. This he had not,—perhaps no one possesses all the requisites for a thorough examination of the problem placed before this gentleman. It calls for a combination of various capacities stimulated by different experiences and contrary interests, not for the abilities of one man but of several.

* Printed on pages 335 to 357.

Some historical retrospect is almost indispensable for the right comprehension of such questions as those arising in connexion with the Deccan Agriculturists' Relief Act. But it is essential that the retrospect should be a careful and correct one. If it is defective or erroneous, and especially if it consists in assumptions which, however often repeated, are unverified and indeed opposed to fact, it becomes misleading and mischievous just in proportion to the ability and general exactness of him who trusts to it and asks others to trust to it as composed of matter ascertained and unquestionable. In this respect the report, following loose traditions or imaginations, has reflected a common misrepresentation which cannot too soon be corrected.

"Under native rule," Mr. Woodward says, "little aid was given by Government for the recovery of debts." It is true that systematic aid was not afforded to creditors; but as to the economical condition of the rayats and small landholders under the Maratha system wildly erroneous notions prevail. Steel, in his valuable collection (pages 269, 271) gives pictures of the condition of the small landholders and rayats, which it may be worth while to quote for the information of those who imagine "Saturnia regna" in the past.

Advances to rayats.

"The ruinous system of lending money to rayats or grain for subsistence and seed is very general. A bond is generally given by the unfortunate cultivator for all outstanding balances and interest at the end of the year, so that he is bound to the sawkar as a slave to his master, mortgaging the crop to him, or selling it at one-fourth, one-third, or one-half its price in a fair market. Meantime the rents to Government are regularly paid, and the rayat finds the advances of the sawkar necessary to enable him to continue his occupation."

Mortgaged zamindari.

"Petty zamindars' estates are often completely in the hands of sawkars, who pay them an annual sum for expenses, discharge the judi or other dues to Government, and receive the whole surplus."

The view thus presented is confirmed for those who do not shun the labour of research by the reports of Elphinstone, Briggs, Chaplin and Robertson. "The Act," Mr. Woodward says, "seems likely to restore this not undesirable state of things." At present the condition of the people under native rule in the Deccan is such, as Mr. Woodward describes it, that they evince much anxiety and eagerness to have [the Relief Act] applied to them." It appears then that the war between the "haves" and the "have nots" does not cease even beyond the British frontier. If at any time the sawkars "advanced without security to reliable clients," that golden age has passed away, for now the clients want "to recover their ancestral lands," held fast by the sawkars apparently until their claims are paid.

The main general impression left by the report is that in its economical aspect society in the Deccan is in a state of completely unstable equilibrium. Ten per cent. only of the agriculturists are in comfortable circumstances; forty per cent. are in a state to be pauperized by one or two bad seasons; fifty per cent. are so poor that the sawkars will not lend to them even on the security of their land. In their case "wretched crops are even in average seasons the outcome of wretched tillage in poor land." "Figures" again "tend to support the general opinion that the poorer cultivators of the Deccan on an average of seasons are unable to subsist on the produce of the land tilled by them." The poorest and most shiftless people gravitate naturally, of course, to the lowest classes of soil. Every saleable advantage of the superior holdings is gradually parted with to the more frugal and energetic in exchange for the means of immediate subsistence or indulgence. It is not therefore wholly the fault of the land or the rent in the Deccan, any more than in Ireland, that the worst lands are usually in the worst hands. It is the result of a tendency that is in some measure irremediable, or remediable only in a direct form by measures that must be fatal to progress and prosperity. The fifty per cent. are beneath the care and the oppressions of sawkars. They produce no more than they consume in bad years, less. Their presence and their poverty must cause a continual drain on the classes just above them—tending to drag them down to the same level.

If, as Mr. Woodward says, "the conclusion is inevitable that [the ordinary cultivator] is unable even to live on the yield of his land without help" and he still remains a cultivator, what hope or possibility is there that he should be aught else but a pauper? Such a state of things implies that cultivation has descended too low amongst the barren fields. There must be either over population or a set of moral influences at work most unfavourable to economical development. Both causes of poverty are, as a fact, in operation. The people are not of sufficiently migratory habits. Though the population is not numerically large, it exceeds in some localities the capacities of the really fertile soil: the crowd at one place is not relieved by paucity at another. Marriage and multiplication are not governed by prudential restraints. The agriculturist is not one because he has any gift for the calling, but because he was born to it. It is vain to combat evils that spring from such sources by mere economical remedies

They must, to be met effectually, be met at their sources by the diffusion of an improved education—not necessarily an education of high refinement, but of common sense and gradual disengagement from hampering traditions.

The highest class of cultivators constituting ten per cent. of the whole are "solvent and independent." Over them the sawkar has no power. But while the transactions "between sawkars proper and agriculturists have been reduced seventy-five per cent. of their amount before the famine years," concurrently with an extension of agriculture, there has been a great increase in those between the agriculturists themselves. In 1881-82 Mr. Woodward found that "sales and mortgages of land by cultivators to cultivators were largely in excess of similar transactions between money-lenders and cultivators. In more than half the total transactions sawkars had no hand at all." It is not of course from the forty per cent. of the middle class of agriculturists that the money can come for transactions of this nature and on this scale. As to them, indeed, "the best land of their holdings is usually sold or mortgaged." It follows that the "upper ten thousand," the ten per cent. of prosperous agriculturists, are those who are becoming mortgagees and purchasers of the many thousand small estates which thus change hands every year. In Satara the redemption suits, exceeding those of the other three districts, are "mostly by cultivators against cultivators." The sawkar mortgagee "does not usually cultivate the land himself, but lets it out on the Metayer system," and the tenant is "usually the mortgagor"; but "where another cultivator is the mortgagee, he usually cultivates himself and dispossesses the mortgagor." In proportion, therefore, as the Act excludes sawkars from business in favour of rayat capitalists, the result must be a continued agglomeration of the lands having any saleable value in the hands of fewer holders. Now it is not the worthless farms of the poorest fifty per cent. that will be thus absorbed, at any rate in the first instance; it is the holdings of the half-struggling, half-thriving middle class that will be annexed by their richer neighbours. The former owners, extruded from their holdings and reduced to the "status of labourers," will deprive the social and political organization of what has been its chief element of stability in the past. Their comparative intelligence as measured by that of the lowest class will no longer have the fair play, the command of resources, which it formerly enjoyed, and, working as labourers on the lands once their own, it is not impossible that they may in time cease to appreciate "the protective character of the Act." They may become a discontented and dangerous "proletariat." At any rate the account given by Mr. Woodward foreshadows a great change in their condition, which in a generation or less will invite new experiments in agrarian legislation. Let us hope that the statesmanship of that day may at least rest on experience: some ludicrous failures will thus be avoided.

One of the main objects of the Deccan Agriculturists' Relief Act was to preserve the rayats from the loss of their hereditary lands, which economic laws threatened to bring about. To such a "peasantry," it was said, "expropriation means discouragement, despair exasperation." It seems as though this expropriation was to be accelerated and made irretrievable by the law intended to prevent it. Such a result is not without many analogies in history. In no sphere are half-truths and undisciplined sentiments more dangerous than in politics. We neglect some simple necessary safeguard and find ourselves launched upon a revolution. A leading purpose of the Act, if not indeed the chief object to which all its other provisions were merely auxiliary, was to improve the solvent rayat's credit along with "his relations to the capitalist." In practice "the tendency of the (Deccan Agriculturists' Relief) Act has been to perpetuate the blow dealt to the rayats' credit during the famine years." No doubt "where the seasons since the introduction of the Act have been favourable," the rayat, "freed from the fever of his creditor," or, in other words, from the obligation of paying his debts and able to "laugh at a decree," "has experienced a most welcome and sensible relief." He boasts he "can do very well without the sawkar," and so he can until the lean years come again or until continued prosperity has bred new lavishness. Are the impressions of the people of this degree of enlightenment to be trusted to? Can their own accounts of their own comparative condition even be depended on? Is it the part of a moral and civilized Government to encourage this silly and childish glee at the momentary triumph of "repudiation"? As to the ultimate benevolence of such a policy towards the people themselves, Mr. Woodward furnishes us with materials for at least an approximate judgment. "It may be questioned," he says, "whether they are not living in a fool's paradise and whether their opinion will not speedily change with circumstances." Nay, the thing is demonstrated as a fact of observation by the first touch of practical experiment. In Kopargaon the crops have failed. "But for the Act, the sufferers would doubtless have

got petty advances from the sawkar." As it is, in spite of sacrifices on the part of the Government, "whole villages are deserted," "most of the cattle have been sold off one by one," "much of the land is uncultivated." "But," says Mr. Woodward, "had the rayats been able to borrow, all that is theirs would have been pledged to the sawkar," and therefore their present condition is preferable to what it would have been under the old order of things." Let us examine this. Under the old order of things their property would have been pledged; under the new it is sold. The mortgaged house might still have sheltered the rayat's family;—he has had to abandon it. His land too, we are told, would have been pledged; but surely these penniless Kopargaon rayats belong to that fifty per cent. of the agriculturist population whose "land, as a rule, is neither mortgaged nor sold," because the "sawkars do not readily accept it as a security for an advance." The sawkars cannot take that as a security which has no market value, and we may feel certain that before villages are deserted, the fields that are worth anything have been sold. In what respect the absolute destitution of the present is preferable to the embarrassments of the past it would, I think, be hard to demonstrate,—to say nothing of those unfortunates who intermediately have been exposed through the destruction of credit to hunger, disease, and death.

"There needs be no serious apprehension," Mr. Woodward thinks, "that the sawkar will cease lending to agriculturists." It is to be hoped this is so, though it is inconsistent with other statements in the report; for as to the great middle class of the agriculturists a couple of bad years puts them into such a position that, "unless assisted, any further strain compels them to gradually sink to the status of labourers." But their chances of rising to prosperity again must, on the same authority, be seriously diminished by the Deccan Act. Under this, we are told, "loans on credit will largely take the place of secured debts." I cannot think it a good effect of a statute that it makes unsecured debts preferable to secured ones; it is indisputable that unsecured debts will cost or ought to cost the debtor more than secured ones. If the law makes the so-called security a snare, the middle class rayat will borrow on more onerous terms in order to cover his lender's risk, and the drain on his profits (the only profit which largely supply the sawkar's gains) will become greater than under the former system.

It appears, however, after all that this conjecture as to the future has no foundation in the present. What has really happened is that "the rayat's credit is so far impaired that a higher form of security is now demanded from him," and what form this security takes also is stated. "The sawkar no longer lends readily on mortgage security unless the land is exceptionally valuable. He usually demands an out-and-out transfer of the land, and from the poorer class of cultivators will ordinarily accept no other form of security." Why an entirely different spirit should possess the sawkars in the future I am at a loss to conceive.

Coupled with new principles in economics, this report presents us, if we consider the matter, with some equally original assumptions as to human character. "That the tendency of the Act is to produce habits of thrift and saving can hardly be questioned," Mr. Woodward says; yet I take leave to doubt whether the people who are freed from their debts and "boast of their independence of the sawkar" are the most likely to become the frugal class who make capital or the trustworthy class to whom it can safely be lent. As the conditions of lending are made harder and its risks increased by law, and the demoralization produced by the law, "thrift and saving" will be discouraged by the loss or diminution of their ordinary reward. The poorer class of rayats will no doubt find themselves sometimes richer in the sense of having fewer debts to pay, but this advantage they will in many casss have gained by semi-starvation and a permanent fall in prosperity, from which loans would have preserved them. Looking to the matter as still future, there seems no strong reason for securing a probable avoidance of evils by an anticipation of the evils to be avoided.

Of course, "if the rayat can no longer get easily he can no longer spend foolishly, but neither can he spend wisely. His own capacity, unaided by capital, remains unfruitful. But though "good crops and freedom from the grinding pressure of indebtedness have combined to put saving within the power of most of the more prosperous cultivators affected by the Act," what has been the result? Secure in their persons and property, the rayats enjoy the long desired privilege of paying off their debts according to their means." "They consider they would not be justified in paying anything on account of their old debts until they had made a suitable provision for their needs until the next harvest." This sounds

very like a land-league doctrine. But as the cultivators practise saving on these comfortable terms, and conscientiously refrain from parting with any money which according to their own estimate may be needed for their wants of the year, it follows of course that "the immense amount of material wealth which would have gone to swell the hoards of the moneyed classes has been intercepted in transit and remains distributed amongst the producers." I do not dwell on the economical science which treats the hoards of money-lenders as withdrawn from commerce; but when the rayats have come into such a fortune it is of little moment that "their occasional bursts of extravagance can no longer be indulged in when they can no longer get the needful funds." They have the funds at least for a season, gained in a way the most likely of all to induce prodigality amongst a rude and thoughtless class. How "these have perforce reduced their customary expenditure" it is hard to conceive That they should have done so through a sagacious forecast of the future, implies a needlessness for them of any special legislation. While, then, "they dole out to their creditor according to their pleasure or their means" the surplus beyond their own generous estimate of their necessities, it is absolutely certain, unless they contradict all experience, that they will live not more frugally, but less frugally, than heretofore. To save money by repudiating debts is a process that cannot be often repeated, and the harm it does is in the long run infinitely greater to the debtor than to the creditor.

I do not find it easy to reconcile with Mr. Woodward's theory of frugality begotten by suddenly acquired wealth a fact which he sets forth as a fruit of his observations. He says "That easy borrowing has begotten foolish spending is obvious." Here we touch human nature again—a capacity to spend expanding as the pressure of necessity diminishes. If the proposition be looked at on its own merits, the observation occurs that there is no condition of human welfare that may not be abused. Unless the Government is prepared to appraise every man's character and to proclaim it, it can but forbid loans or allow them. In the one case it must deprive enterprise of the indispensable aid of credit; in the other it must recognize that liberty to use a right or privilege is liberty also to abuse it. It is a vain expectation that the foolish and improvident shall not be at the bottom of the social scale. They may be guarded against fraud, but not against their own imbecility. They need a stricter discipline than men of a higher type, as well as a more careful protection—and most of all, the kind severity in their own best interests of a strict enforcement of honest obligations.

The unintelligent rayats, Mr. Woodward says, "appear to enjoy few of the advantages while suffering to the full the disadvantages entailed by the Act." The unintelligent rayats form a majority of the whole class, as must be inferred from their need of special protection against their own incapacity. The view stated by Mr. Jopp follows as a conclusion from such premises with the cogency of mathematical demonstration. "He says that the almost unanimous opinion of the rayats is that the Act has done more harm than good." Mr. Woodward's contrary opinion must have been formed on a much less close acquaintance with the facts and the people. "Those cultivators," he says, "who speak against it either themselves combine money-lending with their other occupations, or are mere tools set up by interested persons." Surely it is not necessary to accept this under the circumstances stated by Mr. Woodward. The intelligent rayats are "sensible that their relations with the sawkar are imperilled," and suggest plans of liquidation more stringent than the Act allows. They feel, what the Legislature has failed to see, that excessive intermeddling defeats itself. Then we are told "the only apparent disadvantage to the rayat from the Act is that he is unable to get loans with the former facility." But what that slight disadvantage really comes to we soon afterwards learn. "Much land remains unsown owing to the difficulty of getting bullocks to cultivate it." "No doubt but for the protective character of the Act the sawkar would in numerous cases have advanced the wherewithal." The legislative benefactor here then is one who prevents one blade of corn from growing where else two blades might grow.

We have only to go with Mr. Woodward into the working of the Act to see that it must necessarily ruin the respectable members of the money-lending class, except in so far as they are supported by transactions resting on personal confidence, in which the positive law does not operate at all. He has found that "In cases of debt, secured or unsecured, the creditor is called upon to prove the history of the transaction from its origin. This he often finds it quite impossible to do. . . . The origin of ancestral debt would naturally for the most part remain unknown" "Creditors loudly complain of the uncertainty and inequality of the rates of interest awarded under the existing system. Again, the calculation of the profits of land while in the possession of the mortgagee is a difficulty

uniformly acknowledged by the Subordinate Judges. . . . The judgment must of necessity be in very many cases little better than guess-work." On such guess-work men are ejected from lands which have in some instances been held for several generations as absolute property. If a creditor seeks to enforce payment from his debtor, his proceedings are hampered with "risk, uncertainty, apprehension, cost, and delay." Truly, therefore, as Mr. Woodward observes, "the causes of the decrease of litigation [are] not far to seek". For such advantages as he has thus described,—adjudication in the dark, "guess-work" "uncertainty, cost, and delay,"—Mr. Woodward would "gladly see the Act extended to the other districts of the Deccan, and even to the entire Presidency." This would at any rate afford a wider field for repudiation, evasion, "independence of the sawkars," "equitable compensation" and eventual collapse.

Pending this consummation, the complaints of the sawkars which Mr. Woodward reports, appear to be not wholly unreasonable. The whole frame of the Act, they may well contend, *does* go to produce an "inevitable bias adverse to them on the part of those entrusted with the administration of the law." They had a right to "confidence that contracts sanctioned by the existing law would be enforced according to it." In the constitutions of some States it is expressly provided that laws shall not be passed having a retroactive effect; by every legal system such laws are looked at askance. By sections 12 and 13 of the Act the debtor is invited "to dispute the claim which he knows to be and is ready to acknowledge as a just one." It is not to be wondered at, therefore (the sawkars being men of like passions with ourselves) that "their attitude is one of extreme apprehension, distrust, and discontent." How could it be otherwise when they are so hopeless of justice that they are willing "to compromise debts at one-half or less their actual ascertained amount paid down in cash"? The sawkars, however, are not wholly without hope—a hope that the necessities of the position may lead to a repeal of the Act. When this hope has been abandoned, Mr. Woodward thinks the sawkar may possibly and "partially resume his usual transactions"; but seeing the utter failure of the device in section 22 for drawing abundance out of barrenness by the touch of the Collector, he "hesitates" to "entertain this hopeful view for the future." "Unless the sawkar is assured of a fair chance of recovering his advances with interest at a fixed and certain rate, it can hardly be expected but that his business will be of the most contracted kind." Here Mr. Woodward is reasoning in full view of the facts, but in presence of such a conclusion what becomes of his loose utopian prediction thrown out elsewhere that "there need be no serious apprehension that the sawkar will cease altogether lending to agriculturists: they are as essential to him as he to them"? On what terms can a man lend whose securities may be set aside for a purely conjectural estimate of obsolete transactions? How can he supply himself with capital when he knows not what rate the fancy of a Subordinate Judge may allow on his loans? How can he conduct his business with honesty and moderation when on the one hand he is morally certain to be plundered of a great part of his due, and on the other has to meet the competition of unprincipled rivals who turn the defences set up by the Act for the rayat into screens for their own chicanery? It was inevitable that under a reformed system the sawkar, apt like the rest of mankind to abuse his advantages, should have to submit to an equitable revision of many contracts and to limitations of his powers of coercion, but he was not a fit subject for spoliation and impoverishment. The welfare of the agricultural class itself required his preservation, as indeed was fully recognized when the Deccan Act was introduced. "The petty sawkars or middlemen are the chief sufferers," that is, the class in immediate relations with the more needy rayats. "Many petty sawkars have given up money-lending altogether and have betaken themselves to farming or shop-keeping or both." This withdrawal of capital and of skill in dispensing it, this increase of hazard in lending,—how can they fail to raise the cost of accommodation? In spite of all statutes and all action of the Courts the needy man will borrow, and the lender will exact the more in proportion to the difficulties and uncertainties he has to face. Mr. Woodward says, "those who can get advances, get them on similar terms as before." This implies that the mass of borrowers are now shut out; but the mere rate entered in a security affords no certain information of what is paid for a loan. That depends on the premium deducted without appearing on the face of the bond, and there it is pretty certain that high interest will not appear, however bad the security, so long as Subordinate Judges are invited to cut down the rate in every case to what after the event they think reasonable, or think some one else will think reasonable.

Borrowing then will go on, and on the secretly extortionate terms which, when the Act was under discussion, were dreaded as a ruinous abuse, which the skill of the legislator was to prevent. "As strong necessity frequently constrains the borrower," it follows inevitably that

any serious reduction of the facilities for borrowing would be highly injurious, if not ruinous, to the "ninety per cent. of the agricultural population" whose emergencies cannot otherwise be met. It must be remembered that facilities for borrowing imply competition in lending, and competition, low charges for accommodation. If we admit, then, with Mr. Woodward "the impossibility of starting the cultivation of land newly taken up without extraneous aid," the function of the capitalist seems not only useful but indispensable. Nor can he really be replaced by any organization which is slow and mechanical in its working, encumbered with forms, and incapable of adapting itself to the infinite details of individual needs and personal character. These "can only be satisfied by one whose thorough local knowledge enables him to render the required assistance promptly as the need arises." The rayats have "boycotted" some overreaching sawkars; the Act tends to "boycot" all alike, but specially to drive out the best men from the business by hampering honesty with impracticable conditions.

It appears indeed that the menaced exodus of the sawkars from the Deccan has not taken place. Only "rare instances occur where they have left the scnof their former calling." But then "they have not yet managed to settle old scores. Much mortgaged land is on their hands, and their presence is necessary until the incumbrance is cleared off." They are thus forced to remain; and the more so when payment of their mortgages has been decreed by instalments extending over many years. But even where they have made the villages their homes, their presence of course avails nothing when they have changed their calling. As Mr. Woodward points out in the case of those who continue their business, their "dealings with petty shop-keepers, artizans and the like are unchanged, though fear is entertained that they may seek to avoid their obligations by making themselves out to be agriculturists." This fear is the most significant comment on the Act. It indicates the demoralization of the peasantry accepted as an accomplished fact, and dreaded as a spreading sore that will soon pervade every class of the rural community. The result already, unless statistics are entirely misleading, has been a semi-paralysis of trade throughout the district. The license-tax receipts had in 1881 fallen off fifty per cent. from their amount in 1879. The period should have been one of increasing prosperity, one of those instances of rapid recovery which economists dwell on as affording some compensation for the depopulation caused by war and famine. Instead of this we see a decline which on a wider scale would be taken as the natural sign of some appalling national calamity.*

In his introductory speech, the mover of the Bill, which became the Deccan Agriculturists' Relief Act, said: "We cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in obtaining all that is fairly due to him and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, the destruction of the rayat's credit or his bondage to secret and extortionate agreements must ensue, and all our well-intentioned interference will do harm instead of good. With such provision, the measure will not injure the rayat's credit, but improve it." And in his speech delivered on the passing of the Bill, the same gentleman observed: "In short, I look upon this provision as the key-stone or test-point of the Bill. If it works well, the rayat's credit will be secured on a satisfactory basis; if otherwise, his borrowing, even for reasonable purposes, within the limits of his true means, will become most difficult, while the alternatives of absolute non-transferability of land, or eviction and a poor law, will stare us in the face."

Let us compare these anticipations with the ascertained facts.

The mode of investigation and the bias against the creditor imposed on the Courts by the law make it quite uncertain, as Mr. Woodward shows, what amount or whether anything is likely to be recovered in any particular case. But the creditor who has got a decree finds that decree is but a mockery. "The debtor laughs at the decree: he knows that it is innocuous." "The rayat, now that he has the upper hand, is not slow to apply to his creditor those lessons of dishonesty" which Mr. Woodward, differing from the Deccan Commission, thinks were first taught him by his creditor, but in which the Act alone affords him the means for full proficiency. Hence the judgment-creditor is reluctant to "throw good money after bad" in costs of attempted execution. "The excessive trouble and expenses of these execution proceedings is palpable: the game is not worth the candle." "The small number of decrees

* Note.—It seems open to question whether the comparative proceeds of the license-tax are really the index of the sawkars' profits that Mr. Woodward supposes in the 9th paragraph of his report. I have taken the statement as it stands.

executed and the insignificant amount recovered under them will best show what hopes the creditor has of seeing his claim satisfied. Enough has been said to prove that the sowkar is practically debarred by the Act from resorting to the Courts." Such is the working of the Act as described by Mr. Woodward. What its working was to be may be learned from the speech introducing it. "The problem before us," it was said, "is how to keep the money-lender in his place, to encourage and support in him in all useful functions. . . . We must foster due credits. . . . We must hold the rayat responsible in our Courts for what he has really borrowed." It would be hard even in the history of legislation to find a more pointed contrast. Credit is nearly extinguished; the capitalist's functions are almost unexercised: the rayat is made irresponsible, "set free by a sudden, one-sided and heroic remedy to enter on a fresh career of indebtedness" if any one should be foolish enough again to lend him money and so make himself the victim of the "dishonesty" which the rayat "is not slow to apply to his creditor."

I have quoted the official statement that the provisions for the management of judgment-debtors' lands by the Collector were to be regarded as the "key-stone or test-point" of the Act. Now that the Act has been for between three and four years in operation, what does Mr. Woodward report as to the soundness of this key-stone? What results when the touch-stone is applied to the test-point?

The Collector feels that he is unable satisfactorily to conduct the management of portions of petty holdings scattered over his district. They cannot be directly managed by him." "Debtors with a surplus estate beyond their real necessities seldom figure in the Court at all. If a decree be passed against them, they will satisfy it, without permitting the creditor to apply to the Court. Judgment-debtors, therefore, to whom section 22 will be applicable, are either dishonest persons, who seek to avoid payment of debts which they have the means of discharging, or, as in the vast majority of cases, persons reduced to virtual insolvency, after having tried every means to avert the evil day by selling or mortgaging their best land and retaining only the worst to supply their bare food necessities." "There are no instances of creditors, the persons most interested in the success of the measure, applying to the Courts to enforce it. Some of the Judges have expressed doubts as to whether the law authorizes them under section 22 to act on their own motion. The few references, however, that have been made to the Collector—only four, I believe, in all—have been made by the Courts spontaneously. It is evident therefore, that the creditors—very shrewd as a class where their pecuniary interest is concerned—fail to see how the proposed management will benefit them. From the Judges and Collectors whom I have personally consulted on the subject downwards, I have not heard one single opinion in favour of the measure, nor gathered a hint as to how it is to be made practicable." "I am not sanguine that section 22 will ever be worked to any great extent under existing conditions, and it is clear that up to the present the intended compensation to creditors has proved purely imaginary."

Such is the actual working, or rather failure to work, of a clause under which it was declared that the creditor's "chances are greatly improved by the Bill; for the rayat will strive to pay punctually rather than come under the management of the Collector, and the Collector's management (if efficient, as it must be made) will make loss more improbable still. Notwithstanding all fair allowances for risk, lower rates will thus prove as remunerative as the present high ones." Comparing this with the report of Mr. Woodward, we are able to gauge the efficiency of the Act by a standard chosen and proclaimed by its own sponsor.

Seeing the principles on which the rayats have acted and have been allowed to act with regard to their creditors, it must, I think, make a conscientious Government wince to be told in such a connexion that "no abnormal pressure has been needed for the collection of the land revenue, though the burden of enhanced assessments furnishes the principal subject of complaint to the cultivators." It appears then that enhanced assessments have been imposed and exacted from the very people whose helpless indebtedness was made a ground for special legislation. "The ordinary cultivator," Mr. Woodward says, "is unable to live on the yield of his land without help." Out of this insufficient yield the Government takes an augmented share. Will not the sums "doled out to the rayat's creditor be diminished by at least an equal amount"? The creditor is a suppliant at the mercy of the Government, and through the medium of his debtor is made to pay the increase of assessment. The rayat must pay the tax-gatherer, but as to other creditors "the law protects him from the obligation of meeting his liabilities."

The insolvency provisions of the Act have remained a dead letter. This, Mr. Woodward says, "is a matter of surprise," and in some degree it is; yet Mr. Woodward himself furnishes a *vera causa* which provisionally we may accept as sufficient. "The rayat fails to perceive the benefit of becoming insolvent by process of law. . . . Practically the law protects him from the obligation of meeting his liabilities. He therefore really enjoys all the advantages of a state of insolvency. . . . He has no longer any reason to fear his creditor." "No protection or relief is necessary to a man who already laughs at a decree."

He is master of the situation. "Debtors are comforted and creditors tormented." Why should he descend from this position to seek an indulgence he in no way needs? It would seem that under a system like this the sawkar himself must be very soon reduced to insolvency. In some cases he has been. At one time, I believe, there were several money-lenders in the civil jail at Ahmednagar. But human ingenuity strives persistently against laws which run counter to the general interest, and the sawkar, baffled at one point, finds compensation at another. He has but to put a slight strain on his conscience in order to occupy the defences set up against him. By means of conciliation he may recover from some debtors all that the Courts deny him from others.

On the subject of "conciliation" what Mr. Woodward has to report is that "many influential and respectable persons shrink from accepting the post." "Most of the existing conciliators are esteemed neither impartial nor independent. . . . Very few enjoy the confidence of both parties." The rayat often evades appearing owing to his "distrust and misapprehension of the conciliation system." The use made of the conciliator's mediation is thus described: "Agreements entered into before the conciliator are almost always settled by the parties thereto beforehand. They are used as the binding and inexpensive substitute for a new bond." It is easy to see who must profit by this system. Roguery patronised by the conciliator will by-and-bye recoup the money-lender the sums of which he is defrauded in the Courts. To prevent such an abuse of the system it must be administered, not by the illiterate rustics who it was at one time thought could settle litigation, but by men of education and judicial capacity. The appointment of Subordinate Judges "as conciliators has been most popular." As the other conciliators are in general neither trusted nor competent, the way to improvement is clearly indicated.

As to the village munsifs, "agriculturists, for whose benefit the Act was intended, are unaffected by the establishment of these Courts. They are neither sued nor do they sue in them often." "It is only in the large towns that suitable persons [are] found ready to fill the post." "The appointment of patils as village munsifs, unless they are of exceptional attainments and character, will be deprecated by anyone who has observed how completely in nineteen cases out of twenty they are under the influence of their clerk, the kulkarni." This is not a part of the system on which, judged by its working, its chief advocate could now pique himself.

The arrangements for universal ragistration have been so far successful that now "to avoid the trouble and expense of registration loans of small sums are not usually reduced to writing." Rather than submit to the burdensome formalities of registration, the sawkar trusts to the word of his client. This involves risk, and for the risk the borrower must pay. In every direction an excessive multiplication of safeguards makes the protected cutivator's position worse than it would be without them. The many changes in the definition of "agriculturists," while the law sets up a peculiar set of legal relations between the agriculturist and other persons, will by-and-bye be a fruitful source of litigation and embarrassment. In the case of registration, for instance, who is to tell years afterwards whether a man who executed a particular security was or was not at that moment an "agriculturist" as then defined? An "agriculturist," once a trader, gives up agriculture, and the suit on seven years' old bond, which could have been prosecuted against him at any time for five years to come, becomes suddenly barred by limitation. If he incautiously resumes his former calling, his old liability revives. An equity of redemption, valueless to its trading owner, may apparently be assigned to an agriculturist and made a means for recovering the land for nothing. The ingenuity of pleaders and others conversant with the law will discover other uses and abuses of it which will often make look absurd as well as unjust. There is no need to help them with suggestions.

As to the general result Mr. Woodward reports: "The Act may be said to have accomplished its object, namely, the relief of the indebted rayats of the Deccan; and this at the expense of the money-lenders." It is the first time, I believe, that the latter object has been so bluntly stated. Hitherto the sawkars have been soothed or mocked with honeyed phrases, persuading or meant to persuade them that they must really grow richer by parting with half their property. "Now debtors are comforted and creditors tormented." This is perhaps "to keep the money-lender in his proper place," but that place is not the one that he was taught to expect, nor is it one in which he can be eyed with comfort by a prudent Government. Three good seasons, combined with protection by the law from the necessity of paying creditors, have enabled "the better class of cultivators" to do without the sawkar's help at the same time that the rayat has "kept a grip" on the produce of his land. "The

well-to-do cultivator," however, "can still borrow . . . while the poorer rayat is reduced to the alternative of resigning his field altogether or of foregoing the customary loan. . . . Should the favourable conditions suffer a relapse, the land of the inferior class of cultivators must go." "The money-lender can and will accept no other form of security. The only remedy will be for Government to step in, and, recognizing the inevitable and imperative necessities of the case, assist its tenants by timely and liberal aid to tide over their difficulties. The rayats, while grateful for their release from the clutches of the sawkar, naturally look to Government to replace him when the evil day shall arrive. . . . . It seems then clear that, as a real and large measure of relief to the rayats and as a method of equitably compensating lenders who a e entitled to some return for the losses they have sustained under the operation of the Act, a general liquidation of the debts of the cultivators by Government is the great desideratum." To this complexion have we come at last. It must be a cheering result of the policy of our meddling that the Government is called on to pay the debts of a population. Mr. Woodward would "gladly see the Act extended to . . . the entire Presidency" and to every class; and thus the scope of the beneficence of Government would no doubt be greatly widened with fiscal, economical and moral results as yet unapprehended. A question however arises, if after all the Government is to bear the burden, of why the solution of the difficulty could not have been arrived at without the complex machinery of the Deccan Agriculturists' Relief Act. Another is whether it will not be necessary for really effective relief to virtually set aside this statute with its amateur equity and its almost peurile devices for clothing arbitrary guess-work and a sham enforcement of obligations in the grave forms of law.

The Government has now before it the results of a disinterested and intelligent, if not very profound, investigation. They will not be deemed the less trustworthy because obtained by a gentleman generally favourable to the Act. From these the Government can form its own conclusions as to the practical effects and the logical consequences of this original piece of legislation. The occasion has not come—in my time it probably will not come—for me to press any remedial theories of my own. Instead of that I will call attention to the wise words of Sir Thomas Munro: "Our great error in this country during a long course of years has been too much precipitation in attempting to better the condition of the people with hardly any knowledge of the means by which it was to be accomplished, and indeed without seeming to think that any other means than good intentions were necessary." It is true that the Deccan Act has not produced quite such a social chaos as might have been expected, owing to that principle by which a new law placed in the midst of other institutions hardly ever does all the good or all the evil that friends or foes anticipated; but it obviously and conspicuously falls short of achieving the ends for which it was fabricated. Truly, to use the words of another eminent authority, "when we overturn by an Act of the Legislature institutions which popular consent has maintained for a score of centuries, we sometimes forget that we are not the bearers of a political revelation from heaven." It is hard at least for a man of plain understanding to accept the revelation as duly accredited so long as the utterer's prophecies greviously fail.

BOMBAY;
27th July 1883.

RAYMOND WEST.

Remarks by Mr. M. G. RANADE on the Honourable Mr. Justice WEST'S note on Mr. WOODWARD'S report on the working of the Deccan Agriculturists' Relief Act.*

1. The first remark that occurs to me on a perusal of the original report with the note on it is that Mr. Woodward, while generally approving the principles and certifying to the moderate success of the practical working of the Act, has in many places given utterance to inconsistent views, of which full advantage has been taken in the note to support settled conclusions. In his anxiety to do justice to extreme views Mr. Woodward has failed to maintain a correct balance between the opposing considerations, and the casual remarks which appear in many paragraphs seem out of place with his general recommendations, though they cannot fail to detract from the value of this independent testimony.

2. The proper standpoint from which the working of the Act must be judged appears to me to be that it is admittedly an experiment dictated by an emergency and that it is further a compromise between the *let-alone* policy and extreme communistic suggestions. It is moreover one out of many reliefs simultaneously promised to remedy an admittedly hopeless

* Printed on pages [illegible]

condition. Whenever its effects on the credit of the rayats and the economical prosperity of the country are considered, then three characteristics of the Act, namely, that it is an experiment a compromise, and one of several administrative reliefs which were to have simultaneous operation, should not be lost sight of. A too sanguine or exaggerated view of its beneficial effects is necessarily doomed to a disappointment. A mere judicial remedy can never be reasonably expected to work miracles in the way of removing all the evils from which the rayats suffered. The question is not one of absolute results, but of comparative success. An emergency, forced on the notice of Government, had to be met at once, and as far as possible effectively, Government could not let well alone. It had to interfere, and the question was how it should interfere in a way to effect the least possible disturbance of long established institutions and the necessities of many lakhs of poor people over a large country. The Honourable Mr. Justice West himself admits in his note that "it was inevitable that the sawkars, apt to abuse their advantages, should have to submit to an equitable revision of many contracts and to limitations of their powers of coercion, but they were not fit subjects for spoliation and impoverishment." I accept this description of the practical duty of Government in this respect, and, I think, judged by this test, the Act can certainly be regarded as having fulfilled its purposes. It has provided a procedure for a revision on equitable considerations of many contracts, and it has provided temporary limitations upon the powers of coercion. It did not aspire to do more, and should not be blamed for having failed in achieving results which were never aimed at by the Legislature or the Government.

3. The Honourable Mr. Justice West admits that he has no remedy to propose. The time has not come, and in his lifetime it may not come, to remedy the evils which he admits are serious enough. He would wait for the slow progress of education, the growth of common sense, and the gradual disintegration of hampering traditions. If I remember correctly, he did propose five or six years ago a very sweeping remedy, in one of his pamphlets, and that remedy involved a general and compulsory insolvency and the affirmation of a principle which would declare the rayat's property in land to be inalienable beyond a certain minimum. It is clear that the effects of giving effect to these views would be far more revolutionary, retrospectively and prospectively, and would in his own words be fatal to progress and prosperity. The Encumbered Estates' Relief Acts have provided another remedy, which of course was unsuited to many lakhs of small properties. The Deccan Relief Act steers clear of the extreme principles involved in these measures, and adopts the existing judicial machinery to the work of relief. That it does effect equitable adjustments and does not involve spoliation of the sawkars, is clear from the fact that the average reduction of plaintiffs' claims on money bonds seldom exceeds 33 per cent., which means that its influence is chiefly spent in a reduction of the rate of interest. It also imposes a check on the sawkar's powers of coercion, though it does not extinguish his remedies by declaring land inalienable under all circumstances. It is not enough under these circumstances to find fault with its provisions unless one is also prepared to suggest how, without a more radical interference with the existing order of things, the same ends could have been achieved.

4. It serves no good purpose to confound all the provisions of the Act in one general condemnation. Some provisions of the Act have remained a dead letter and will never be operative. These must be separated from others which were evidently intended to be of temporary effect and have been worked out, and these last again must be distinguished from others which are permanent improvements upon the old system of procedure. As examples of the amendments of the last class I would draw attention to the section which discourages *ex-parte* decisions and allows greater discretion in the matter of instalments and reasonable rates of interest, and enforces the active co-operation of the Court in the investigation of civil cases. In respect of the necessity of reducing overgrown paper claims, it provides a procedure which also has many elements of equity and fairness in it and has stood the test of practical application. The temporary provisions are those which relate to the execution of decrees by the attachment and sale of moveable and immoveable property and protect the person of the debtor. The inoperative clauses are those which relate to insolvency, Collector's management, and universal registration. I do not see that any such distinction was present in the mind of Mr. Woodward, and if he had taken the several provisions separately, I think his discriminating review of them would have prevented many of the adverse comments made thereon in the note.

5. Having made these general observations, I shall next proceed to make a few remarks on the paragraphs in detail. The unstable condition of social equilibrium referred to in the 4th paragraph of the note was the emergency which the Government had to face in 1875, when the disturbances occurred and which the famine intensified beyond endurance. Has the Act steadied or disturbed still further this unstable element in social polity? There can be no

doubt that it has steadied it and allowed a breathing time to rally. The transfer of land from the old mirasdars to non-cultivating certificated proprietors, who bought lands at Court sales, has certainly been checked, and many mirasdars have been helped to redeem their lands from old mortgages. The load of debt has not been increased with the lapse of time, but has been cut down and made payable by instalments. Of course, this could not be done without some disturbance and disappointment, but this disturbance has been confined to a degree which none, who have not watched the practical working of the Act, could have anticipated, being limited to a reduction of the exorbitant interest charged and seldom touching the principal. The Act has thus improved the chances of the stability of the social equilibrium. Of course I am fully aware that inevitable tendencies will work themselves out, thrifty classes must thrive and prosper, and foolish people must go to the wall, but this process was going on at a fearful rate, which the conservatism of the rayat could not follow. The Act has imposed the necessary brake on this fast speed, and the people most interested feel it to be so and regard the protection extended to them as a very sensible relief.

6. The Act could not in the nature of things regulate the seasons or fertilize the land but it has certainly increased the motives of exertion and thrift by removing the paralysis which otherwise indisposed people from toiling and saving for others. So far it has increased thrift. The number of instruments executed every year from sheer necessity has diminished remarkably, and there is no evident sign that they feel the want of credit Of course a famine visitation would expose the people's solvency to a hard test, but such seasons are rare, and ordinary scarcity is not found to press harder than before. The rayats have been placed on the sick list, their regiment is regulated with a view to ultimate convalescency, but there is no sign that this change of conditions, in the form of a certain measure of credit-shrinking, has unsettled their vital powers of endurance. The substitution of home-made and closely related sawkars for men of foreign birth cannot be regarded as a calamity, seeing that the new sawkars are bound to be more humane and more compromising than the strangers. Cultivation has not diminished in quality or quantity, and the Government exactions are paid with equal punctuality as before. Meanwhile old sawkars still lend, the better class of them especially, as freely as before, though the middlemen have no doubt suffered in the margin of their profits.

7. As to general repudiation of debts, the good sense of the peasantry and their moral teachings have saved them from the evil effects apprehended in certain quarters. The insolvency portions of the law are a dead letter, and this is the strongest guarantee that the normal relations and the stability of the social organization remain intact.

8. Much has been made of the statement contained in Mr. Woodward's report that the better classes of agriculturists have benefited more from the protection afforded to them than the less self-dependent classes. This result is in strict accordance with all reasonable human expectations. If it had been otherwise, there might have been grave cause for anxiety.

9. As regards the procedure followed in the inquiries undertaken under sections 12, 13, I cannot but think that guess-work, conjecture, and uncertainty, though they enter to a certain degree in all appreciation of oral evidence, are resorted to in a way to disappoint just expectations. I have had rare opportunities of supervising the operation of these sections and the general unanimity of the Subordinate Judges in regard to the usefulness of these rules ought to count for something in this consideration, more especially as most of them came to this work with strong prejudices against the procedure. The question might fairly be asked how otherwise the necessary reduction was to be effected in a judicial manner and on system.

10. As I have said before, I have nothing to say in reference to the Collector's management. In the case of small and scattered properties, that management could never be expected to succeed except at an enormous cost. The Honourable Mr. Hope trusted too much to this compensation, and in this he was probably misled by his Gujarat experience, where the estates are larger, the soil more fertile, and the general condition of husbandry more prosperous than in the Deccan.

11. As regards conciliation, it must be remembered that Mr. Woodward has been unwittingly led to form a harsh judgment of the majority of the conciliators. The conciliators are like the panchayats of old, only with no power to arbitrate in cases of contest. They save the parties and the Courts much useless expense, delay and trouble. They are certainly not distrusted. Their social position is better than that of any other class of voluntary public servants. They enjoy the confidence of those among whom they live. They bring justice to the doors of the rayats in a way no adaptation of the stipendiary machinery can secure. To

entrust the work to Subordinate Judges would be to defeat the main object of the institution, namely, to moderate the heat and passion of litigating parties by honest mediation.

12. The same may be said of the Village Munsifs to a more or less extent.

13. Sir T. Munro's prudent and cautionary advice referred to in the last paragraph of the note is pregnant with lessons of wisdom. The mistake was made when the old "Dámdupat" rule of interest was abolished and freedom of contract carried out in respect of such contracts between parties so unequally situated. The mistake was made when all traditionary protection of person and property was done away with, when the panchayats were abolished, and the periods of limitation reduced. The Deccan Agriculturists' Relief Act is one of a series of measures in which this mistake has been acknowledged and an attempt made to rectify it, consistent with the altered conditions of time. If a general scheme of liquidation is forced upon the hands of Government, the Act would still have done service by preparing the way for it and moderating the pressure of indebtedness. It serves no good purpose to disturb, before the time is ripe for it, existing relations between debtors and creditors all over the country in a wholesale manner. Even when the time comes for it, Government should never undertake the risk of direct liquidation on its own account, or step in the sawkar's place. Private agencies should be stimulated to undertake this work and to carry it on under better conditions than the old system of usurious dealings. This is the goal to which things are tending, and but for the Act no liquidation scheme has the smallest chance of realization. The liquidation scheme in this country occupies the place of the forced purchase of landlord rights in the Irish settlement, while the judicial interference of the Act is like the judicial settlement of rents. After this liquidation, the provisional and non-operative portions of the Act may be withdrawn, and the more permanent reforms embodied in the general law so as to effectually check a recurrence of the old evils.

2nd August 1883. M. G. RANADE.

Memorandum No. 925, dated Satara, the 1st August 1883. No. 16[illegible]

In reply to the query in a demi-official from the Chief Secretary to Government, the undersigned has the honour to state that, from enquiries made of several of the Subordinate Judges in this district, it appears that a good many of the smaller sawkars have been seriously impoverished through the action of the Deccan Agriculturists' Relief Act, though there is nothing certain to show that they are actually approaching insolvency.

2. It is stated that the smaller sawkars have started the business of money-lending on *borrowed* capital, paying interest for this at 8 or 9 per cent. and lending it out at nearly double that rate.

3. The creditors of the smaller sawkars have been very lenient towards their debtors, giving them time to pay and also allowing them to pay by instalments. They avoid pressing their debtors in the fear that by *forcing* them to declare themselves to be insolvent they may lose all, and expecting to recover gradually the full amount of their debts.

R. F. MACTIER,
District Judge, Satara.

From M. H. SCOTT, Esq., District Judge, Ahmednagar, to the Chief Secretary to the Government of Pombay, Judicial Department,—dated Ahmednagar District Court, the 9th August 1883. No. 16[illegible]

With reference to your demi-official letter of the 29th July, I have made enquiries throughout the district regarding the position of the smaller sawkars, or middlemen, who trade with borrowed capital. The Subordinate Judges have not had time to fully search their records, and several of them have been only a short time in this district, but they all, with the exception of the Subordinate Judge of Nevasa, consider that the smaller sawkars are in very embarrassed and greatly reduced circumstances, and that as a class they are rapidly dying out.

2. There are very few cases of small sawkars applying to be declared insolvent, but this is probably owing to the idea of utter ruin which both rayats and sawkars attach to the expression "nadar," as well as to the desire to maintain what credit they still have, in case the Act should be repealed or amended more favourably to them. This desire to maintain

credit and keep up appearances is probably the reason why petty money-lenders who are unable to afford to pay Court-fees have refrained from suing as paupers.

3. In Kade and Karjat, in half the redemption suits filed during the last twelve months, the mortgage defendants had traded more or less with borrowed capital, all had suffered greatly from the operation of the Act, some have closed their business, wholly or partially, and this has also been the case in Shrigonda, where some money-lenders have abandoned villages to live in towns, some have taken to tilling land themselves, and a few have commenced to follow callings hitherto looked down upon.

4. In Kopargaon, out of some 400 money-lenders nearly one-half have given up their profession.

5. In Shevgaon 63 per cent. of the rayats were in the habit of dealing with the smaller sawkars, and these have become much embarrassed since the introduction of the Act. The Subordinate Judge quotes three cases in which well known money-lenders have come to utter ruin.

6. All the Subordinate Judges state that wherever they had a chance of successfully doing so, smaller sawkars have claimed to be agriculturists when sued by their creditors and have prayed for instalment decrees.

7. Khan Bahadur Nasarvanji Carsetji, a Conciliator, thinks that the sawkars' losses are chiefly in paper debts, and that they are recovering in cash their long outstanding loans.

8. It seems clear that now the sawkar is practically prevented from enforcing a decree against an agriculturist, he has only the good faith of his debtor to trust to, and the forbearance and indulgence of the sawkars during the famine and bad seasons is now met by contumacy on the part of the debtors, who not only do not pay the decreased amounts found due by the Courts, but refrain from paying the instalments ordered by decrees. In some cases they have gone so far as to decline even to sell their crops to their creditors in open market and have in fact set them altogether at defiance.

9. The middleman, who was always more or less a speculator, and whose sole profit was the difference between the percentages on the loans to himself and the advances he made to the rayats, thus finds himself sued by the sawkar from whom he borrowed, while he has to meet the claim only a decree which he cannot execute and for which he has had to throw away more cash in Court-fees.

10. The reason that the Subordinate Judge of Nevasa has not noticed any tendency to insolvency on the part of small sawkars is probably that the rayats, owing to fair crops have not been inclined to repudiate their debts, while in other talukas, notably Kopargaon, the crops, owing to ravages by rats, locusts, etc., have for the last two years been far below the average.

11. My own experience leads me to believe that even in districts to which the Act does not apply, its provisions have given rise to fears on the part of the sawkar and to action on the part of the rayat which have tended to seriously embarrass the former. In several cases in Khandesh I observed indications that the smaller sawkars had, from inability to get in their advances, failed to keep engagements with their creditors, and that the rayats had met their sawkars in a spirit of opposition which the latter did not feel strong enough to defy.

12. Much of Mr. Woodward's report is founded on, or coincides with, information furnished by myself with regard to the smaller sawkars.

13. I am sorry for the delay in replying to your letter, which was owing to my having to await replies from the Subordinate Judges.

From W. H. CROWE, Esq., Acting District Judge, Poona, to the Honourable C. GONNE, Chief Secretary to Government of Bombay, Judicial Department,—No. 866, dated Poona District Court, the 3rd September 1883.

In reply to your demi-official letter addressed to my predecessor on the 20th July last, I have the honour to state that from enquiries instituted among the Subordinate Judges serving in this district, I have reason to believe that the smaller sawkars, who do not combine the business of money-lender with agriculture or trade, are approaching insolvency. These men have been in the habit of borrowing at a low rate of interest from larger sawkars and lending to their clients at a higher rate. By the provisions of the Deccan Agriculturists' Relief Act their claims against their debtors are reduced to the smallest possible limits, and the recovery of such reduced claims is made almost impossible under Section 266

of the Civil Procedure Code and Sections 21 and 22 of the Deccan Agriculturists' Relief Act. Almost everything possessed by an agriculturist has been exempted from attachment in execution of a decree, whereas the whole property of sawkars, when pressed by their creditors, is liable to seizure. The Subordinate Judge of Vadgaon gives a list of sixteen persons who have suffered in this way. I have received also a vernacular petition, a translation of which is forwarded herewith, from the second class or small sawkars of Otur in the Junnar Taluka, in which the state of things is depicted.

I am not disposed to think that the extinction of this class would prove an unmitigated evil They are, as a rule, the most rapacious among the money-lending profession and are resorted to by those rayats only whose credit is at the lowest ebb. In a system of relief such as that set forth in the Deccan Agriculturists' Relief Act, however revolutionary in its design and conception it may be, it would be impossible to rehabilitate the whole body of distressed agriculturists. There is a large portion whom it is impossible to attempt to set up or save from gravitating to the position of ordinary day labourers. This is a consideration which, in my opinion, should not be lost sight of in connection with this subject. Mr. Woodward, in his report on the working of the Deccan Agriculturists' Relief Act, classes the rayats into three groups which he denominates higher, middle, and lower. He estimates that the higher class constitutes ten, the middle forty, and the lower fifty per cent. of the cultivating class. This estimate is of course of the roughest possible character, but from the description of the means and circumstances which Mr. Woodward gives of each class, it is impossible to avoid the conclusion that the lower class is beyond the reach of all legitimate assistance. Now it is this class on which the petty sawkar thrives. The risks attending any money advance to a member of this class are so great, that they must be met by a corresponding high rate of interest extending to 30, 50, or even 100 per cent., while the sawkar protects himself by taking care that in no individual case shall the advance exceed the smallest possible limits. The sawkar depends on the number of his clients, not on the magnitude of each transaction. There is no doubt that one effect of the Act has been to induce greater caution on the part of the money-lending class. This feeling will probably extend to the districts adjoining those within the application of the Act. The derangement of the relations between the sawkar and the client brought about by the Act is well understood, and there must always exist some remote apprehension of the extension of the operation of the Act.

Substance of a Petition made by the Smaller Sawkars of Otur, Taluka Junnar, under date the 28th July 1883. No. 16

Before Act XVII of 1879 came into force we used to borrow money from larger sawkars at a low rate of interest and advance the same with or without security to the agriculturists. As we received our dues from these agriculturists, without any very serious difficulties, we were better able to support ourselves and pay off our sawkars. Since the Act came into force we are called upon to produce our accounts from the beginning in support of our claims against agriculturists. We generally do not keep accounts. We have, therefore, to depend upon what evidence may be available. Our difficulties do not end with obtaining decrees against agriculturists. The Civil Courts have no powers to attach agriculturists' moveable or immoveable property such as land, bullocks, etc.; in fact after obtaining decrees against agriculturists we are left to all intents and purposes in the same position in which one would find himself whem his claim is time-barred. To aggravate this evil we are, when sued in Civil Courts or even otherwise, saddled with all the ordinary liabilities to our sawkars. The larger sawkars have now ceased lending us money, and consequently we have ceased lending money to the agriculturists. All money dealings have come to a standstill, and we are left without any means to support ourselves. Our prayer, therefore, is that the Act be cancelled and the old order of things restored.

Memorandum, dated Sholapur, the 21st August 1883. No. 16

The question referred to me in connection with the working of the Deccan Rayats' Relief Act is whether the judicial business of the Sholapur District suggests that the smaller sawkars of the talukas are in any degree approaching insolvency in consequence of inability to meet their obligations to the larger sawkars.

This question must, I think, be answered in the affirmative.

The answer is based upon three facts which are proved by the judicial records of this district.

The first of these facts is that the amount of money now paid to the judgment-creditors through the Court is very small compared with the amount paid in former years. To take the Madha Court as an example:—In 1875 R11,952-15-9 were paid through the Madha Court to judgment-creditors, while in 1882 only R1,915-8-0 were thus paid: in other words, the amount paid last year was less than a sixth of the amount paid in 1875. This is the main cause of the impoverishment of the petty sawkars. When they sue in Court their claims are reduced; payment of the amount awarded is extended over a number of years; and as each instalment becomes due, it is very doubtful whether it will be recovered, and every application to the Court must be attended with some expense. The small payments through the Court are not to be attributed solely to the Deccan Rayats' Relief Act: they are partly due to the impoverishment of the rayats from the three years of famine which immediately preceded the introduction of this Act. But whereas the petty sawkars might have kept their credit with the sawkars from whom they have borrowed capital and have gradually recovered their money as the condition of the rayats improved, they are now by the operation of the Act prevented from recovering more than a very small part of their claims.

(In the Sholapur Subordinate Judge's Court the amounts were
1875 . . . . R36,113-8-1
1882 . . . . R17,044-10-1)

The second fact bearing upon the question under consideration is that some petty sawkars are ceasing to sue in the Courts: this is evidence that they are giving up business as money-lenders.

The third fact is that suits by larger sawkars against petty sawkars are now more numerous, showing that some of the petty sawkars have lost their credit.

These are the only facts which I have ascertained from the judicial records. They do not do more than suggest the probability that many petty sawkars are now on the verge of insolvency. I belief there has been no instance in which a petty sawkar has applied to the Court to be declared an insolvent. Many of the petty sawkars have combined money lending with agriculture or trade. Such persons can now get a livelihood from agriculture or trade, but as many of them lent money which they had themselves borrowed, they are now being pressed by their creditors. In order to avail themselves of the protection afforded by the Deccan Rayats' Relief Act, some of these petty sawkars now profess to have given up their money-lending business and to be maintaining themselves as agriculturists. I am informed that many petty sawkars have been ruined: some have left their villages, others have sold their property and privately settled with their creditors. That this information is correct, is, I think, probable.

The Subordinate Judge of Sholapur, Rao Saheb Ramchandra Dinkar Paranjpe, informs me that two petty sawkars who have been sued in his Court are said to be approaching insolvency.

The Subordinate Judges of Barsi and Sangola, Rao Sahebs Amrit Shripat and Venkatrao Pandurang, report that they can find no information from the records of their Courts. Rao Saheb Amrit Shripat has sent me some statements made by petty sawkars of Barsi, some of whom say they have lost their money and that they are being pressed by their creditors.

I append the reports* which I have received from the Subordinate Judges of Madha and Karmala, Rao Sahebs Krishnaji Narayan Patankar and Krishnaji Parashram Gadgill as they contain some useful information.

E. HOSKING,
Acting Senior Assistant Judge.

From W. WEDDERBURN, Esq., District Judge, Ahmednagar, to C. GONNE, Esq., Chief Secretary to the Government of Bombay, Judicial Department,—No. 81, dated Ahmednagar District Court, the 7th January 1881.

Dr. Pollen, the Special Judge, has kindly favoured me with a perusal of his letter to Government, No. 1220† of the 14th ultimo; together with his statement of objections to the Deccan Agriculturists' Relief Act, and his draft Bill. Many points of great importance are therein dealt with; and some of these points I have now been discussing with the Subordinate Judges of this district, who are collected at Ahmednagar for the annual Judicial Conference. The result of this discussion is to convince me of the great intricacy of the questions involved, and of the necessity for very careful preliminary enquiry before amendments are finally decided on. For when the Bill has been once forwarded to Calcutta, it will be very difficult to obtain

*Not received from the Government of Bombay.
† Printed on page 252.

the assistance of local experience, or to ascertain from the Subordinate Judges who have been working the Act what would be the practical effect of the changes which may be approved in the Supreme Council. I should myself be glad of an opportunity of personally discussing the various amendments before they are passed into law. But in the meantime I have the honour to submit a few observations regarding conciliation,—a question in which I take and have long taken, the strongest interest.

2. In paragraph 16 of his statement Dr. Pollen makes the following remarks:—"By means of agreements before Conciliators the provisions of the Stamp Laws, the Registration Law the Limitation Act, and the Deccan Agriculturists' Relief Act itself can be successfully evaded and defeated. Time-barred debts and time-barred decrees may be revived, unregistered and unstamped agreements may be validated and legalized, simple money debts may be transformed into mortgage debts, unlimited powers of sale may be created, mortgages may be effected without stamps and without registration, the beneficent provisions of the Act itself may be made of no effect, and inequitable decrees may be obtained with far greater facilities than even under the old system." In order to obviate these evils Dr. Pollen proposes (1) to enact that the conciliator should not send an agreement to be filed in the Court unless he approves of it as being fair and reasonable; and (2) that, subject to the control of the District or Special Judge, the Subordinate Judge should in certain cases have power either to remit an agreement to the Conciliator for re-consideration, or to set it aside altogether.

3. In order to judge of these proposals it seems necessary to consider the principle upon which the idea of conciliation by an untrained and unpaid agency depends. If the success of the scheme depends upon the Conciliators being honest, intelligent, independent, and well acquainted with the villagers and their affairs, then I think it may succeed. If it depends upon their knowledge of Acts and High Court decisions regarding limitation, registration, stamps, and evidence, the scheme is almost sure to fail. What courses of action are then open? As I understand conciliation, the object is to obtain an equitable settlement upon the merits, apart from any technical claims or defences; a settlement such as A and B, two honest men acting according to conscience, would desire to make, supposing that their mutual transactions had got into confusion. In such a case A would not repudiate a debt because it was time barred, nor would B exclude his own acknowledgment because it was not duly stamped. And a settlement of this kind would leave no sense of injury behind it: it would be a true reconciliation, *amicitiæ redintegratio*. If this view be accepted, it appears that untrained and unpaid Conciliators of the class now available will be able to do the work. But then it is necessary that the agreements which they effect should not be disturbed on the ground that they have proceeded on inadmissible evidence, or have neglected to enforce the law regarding stamps or limitation. Also it is evident that the parties will not listen to the Conciliator if, on his failure to effect a settlement, the Courts give effect to technical pleas. For the party who relies on a legal flaw in his adversary's case will decline the agreement offered, and force the case into Court. In order, therefore, to carry out a system of conciliation as above indicated, it would be necessary that, where the parties refused a settlement, the Subordinate Judge should not take up the case afresh, but should intervene as "Sar-Panch" or Chief Conciliator sitting with the original Conciliators; and dispose finally of the case, not on points of law, but according to equity and good conscience. This is the method proposed in clauses 12 and 13 of the draft Bill, copy of which is herewith enclosed, Appendix A.*

4. On the other hand, if the provisions as to limitation, registration and stamps are to be enforced, it appears that the difficult questions which must arise cannot be dealt with by persons of less training than the Subordinate Judges. And the only practical method seems to be to oblige the plaintiff to make application first to the Subordinate Judge, who would hear the parties and examine the legal points; and remit the case to the Conciliator after eliminating such claims and such evidence as are not legally admissible. The Conciliator would then either forward an agreement to the Court, or grant a certificate. This method would so reduce the functions of popular conciliation as to make it hardly worth maintaining. But it would save the useless labour of making settlements to be afterwards upset on technical grounds.

5. From these remarks it will be seen that I do not think that Dr. Pollen's proposals go to the root of the matter. But if these proposals be adopted, I would suggest one or two modifications. With regard to the first proposal, it seems that the object is to open the eyes of the debtor in case the Conciliator thinks that the agreement he has consented to is an unfair one. If the Conciliator explains to him how the case stands, and he is still willing to consent with his eyes open, it may be held that he is acting in accordance with his own interest

*Not received from the Government of Bombay.

which he may be presumed to know. I would, therefore, propose that when the Conciliator does not approve of an agreement, he should explain his objections to the debtor, and if the debtor is still willing that the agreement should be sent to the Court, the Conciliator should send it, adding a memorandum of the objections (*e.g.*, exorbitant interest) which he has explained. The Subordinate Judge could then consider these objections at the time of filing the agreement. As regards the second proposal, I would suggest that in each case where the Subordinate Judge thought the agreement should be remitted or set aside, he should make a reference to the Special Judge, stating the reasons in detail after making any enquiry that he thinks necessary. This would tend to prevent too frequent an interference with agreements, and would ensure uniformity of practice.

6. I further take this opportunity to bring to the notice of Government what appear to me certain practical defects in the present system of working conciliation. The Conciliators have been invested with large powers and responsibility, but their discretion is not controlled either by publicity or by sharing their authority with colleagues. When a Conciliator stands by himself, a crafty suitor who knows his partialities and prejudices may make him a mere tool for oppression, especially when the work is "done in a hole-and-corner fashion in a private house." I would propose, therefore, that the Conciliators should transact business in some public place, and should sit together not less than two at a time, notice being given to the public of the hours and days when each Conciliator will attend. This is the plan which is followed in Poona, and is found to succeed well. And I shall be happy to assign a suitable room for the purpose on the Court premises at this place. I ought to mention that I brought this matter to the notice of Government in my letter No. 497 of 28th February 1880, and my proposal was not then acceded to. I trust, however, that Government may, now that the Act has been in force for a year, be pleased to reconsider their decision, as they have done in the matter of supplying karkuns to Conciliators, and appointing Subordinate Judges to perform conciliation work (*vide* my No. 394 of 14th February 1880 and No. 834 of 17th April 1880). From what Dr. Pollen states in his report I fear that the whole scheme of conciliation is now in danger, and I would strongly urge that it should be strengthened by such safeguards as can be obtained through publicity and joint responsibility. Experience seems to show that Natives never appear more favourably then when they act together in the old traditional form of an open Panchait. Individual partiality is thus checked, timidity is protected, and the decision is brought under the censorship of local public opinion.

7. Another point is also deserving of notice is that if Conciliators are to stand and act alone, the choice of persons really qualified is so much limited as to throw too great a burden upon a few individuals. To do the work alone a man must be independent, honest, intelligent, influential, and well acquainted with the people and their affairs. If he fails in respect of any one of these qualifications, he cannot command the confidence of the public, and it is not easy to find many men so gifted. On the other hand, if the Conciliators work together as a Panchait, a thoroughly honest man, however stupid, brings a most valuable element to the common stock; and an influential man is also useful even if he has his partialities, for these will be known to his colleagues and will be checked by them. At present few unofficial persons in the Mofussil are fit to act as Conciliators unless they are of position, training and character such as retired Subordinate Judges and Mamlatdars. But if only men of this class are appointed, a very valuable popular element is lost. Should it be determined that only men of this class should be appointed, I would suggest that they should be authorized and directed to obtain the assistance of respectable villagers as assessors. Such assessors would be of great use in helping the Conciliator to learn the real facts of the case, and to estimate the means and honesty of the debtors.

8. It is also suggested that Conciliators should be brought within the definition of public servants, so that they may have both the protection and the responsibility which the law attaches to that position.

9. In conclusion I would mention that the opinions above expressed regarding conciliation have been arrived at in consultation with the Subordinate Judges of this district and that the recommendations are in accordance with their views.

Note on the working of the Deccan Agriculturists' Relief Act, 1879, by the Honourable J. C. Gonne, Chief Secretary to the Government of Bombay, Judicial Department.

1. The Deccan Agriculturists' Relief Act of 1879 came into force on the 1st November of that year. It was amended in certain points by Act XXIII of 1881 and Act XXII of 1882. The main Act has thus been in force for over 3½ years.

2. In July 1881 Mr. Justice West, while strongly denouncing the principles of the Act, expressed the opinion that it was not working in the way intended by its promoters: and the Secretary of State, by Despatch No 2* of 26th January 1882, remarked that "it is desirable that no greater delay should be allowed to occur in coming to a conclusion on the subject than is absolutely needed to obtain the requisite experience and information. If the Act is working mischief, the sooner this is found out and remedied the better; if it is doing good, the sooner this is established the better; and if the principles of the Act are beneficial, but it contains some defects, the earliest occasion should be taken of removing them."

3. In December last a selected Revenue Officer, Mr. H. Woodward, was placed on special duty for six months for the purpose of enquiring into the working of the Act. His report is now before Government, as also the third Annual Report of the Special Judge, Dr. Pollen, *i.e.*, the report for 1882.

4. Before reviewing the working of the Act, so far as it can be judged from the returns and information now before Government and from conversation with Native* gentlemen interested in the subject, it may be convenient to note shortly (1) the conditions which led to its being passed (2) the objects and anticipations of its promoters, (3) its actual provisions, and (4) the action of Government in its furtherance.

* The Honourable Khanderav Vishvanath Raste.
Mr. Mahadev Govind Ranade.
Mr. Vishnu Moreshvar Bhide.
Mr. Narayan Govind Apte, First Class Subordinate Judge, Poona.
Mr. Madan Shrikrishna, Small Cause Court Judge, Poona.
Mr. Mahadev Yeshvant Raste, Conciliator and a promoter of Agricultural Bank.
Azam Trimbakrav Narayan Rajmachikra, Conciliator and Honorary Magistrate.
Mr. Shitaram Hari Chiplunker, Secretary to Sarvajanik Sabha.
Mr. Govind Mahadev Gadhre, Savkar.
Mr. Chintamanrav Vishvanath Nattu, Savkar.

The conditions which led to the passing of the Act.

5. Under the Native Government which preceded the British Government, the mass of the rayat cultivators were, excepting the class known as Mirasdars, rack-rented tenants-at-will with no proprietary rights in their holdings. The sawkars were the medium for collecting the Government rent, and, besides, extracted from the rayats as much as they possibly could for their own benefit. In practice the rayats gave their whole produce to the sawkars on whom they drew for necessaries. They were of course in the sawkars' debt. There were no Civil Courts to compel payment, but the sawkars used for this purpose the intolerable forms of dunning known as Traga and Dharna, and it is not certain that they were not as efficacious as the process of the Civil Courts.

6. Under British Rule, after an initial period of over-assessment, the rayat cultivators were made practically the proprietors of their holdings so long as they paid direct to Government a moderate assessment fixed for a term of thirty years and liable to enhancement on principles only of general application at the end of the term. Civil Courts were also established, and Traga and Dharna were made criminal offences.

7. The sawkars seem to have adapted themselves to circumstances and to have continued to hold much the same position in relation to the mass of the rayats that they had held under the Native Government. Though no longer the actual medium through which the Government rent was paid, they still made themselves an essential factor in the scheme of collection. They took advantage of the provision of the new British system, which required that the assessment being fixed at a moderate average rate on a series of years must, except in years of absolute drought, be paid without abatement by punctual instalments. The seasons in the Deccan are very variable, and it is estimated that only one in three is good. It may be said that in the main the rayats' income from his land is triennial rather than annual. Economy and forethought were therefore required to enable him to be ready with his rent in bad seasons. It was an irresistible temptation to him to borrow the money as occasion arose instead of laying by from the profits of good seasons. Moreover between the old system and the new there was probably no period of interruption in the dependence of the rayats on the sawkars. They entered on the new system already in debt, being liable for ancestral debt as well as debt incurred by themselves.

The temptation to borrow was occasioned not only by the new Revenue system. The same improvidence or necessity led the rayat to borrow as occasion arose instead of providing beforehand for many purposes, such as seed for sowing his fields, maintenance while waiting for crops, the purchase of bullocks, and customary ceremonial festivities.

8. The habit of borrowing was stimulated under the new system by the fact that the rayats had security to offer in the shape of their rights of occupancy, which had been made

* Printed on pages 361 to 363.

hereditable and transferable property. And even when this property was of little intrinsic value it supplied a powerful motive for payment of debt by reason of the sentimental value which its possessor attached to it and the efforts which he would make to prevent its being taken from him.

9. Lastly, Civil Courts were established, and to understand the use of them made by the sawkars it seems necessary to regard their dealings with the rayats in the aggregate rather than in detail and to remember that their system was not so much one of capital turned over as of capital permanently invested. Their object was to secure to themselves the whole produce of the soil minus what was wanted for the cost of cultivation, the maintenance of the rayats and their families and the Government assessment, or, in other words, the whole difference between the Government assessment and the true rent. They calculated on getting from the rayats the payment of a high interest, say 12 per cent., on their advances, with in good years a partial repayment of capital against which fresh advances were soon made. Thus, however extortionate their rates of interest and compound interest, nothing was farther from their wishes than any repayment of their dues approaching entire satisfaction. The debts were nominal as regards amount, and many bad debts must have been incurred. Their effective demands on the rayats were necessarily limited to what could be got out of the rayats. Their suits against debtors, seldom resisted, were for the most part mere formal preliminaries to taking out decrees, and the decrees when taken out were in the great majority of cases not executed, but held over the debtors *in terrorem*. In this way they were compelled to pass the new bonds necessary for keeping claims alive, and to hand over to the sawkars the entire produce of their fields, receiving back as occasion required such advances as were necessary for maintenance, agricultural operations and the payment of the Government assessment. The actual execution of decrees for money is in fact a most difficult and troublesome matter, and it has been remarked that a suitor's real troubles do not begin till, having got his decree, he tries to execute it. The holders of decrees, however, derived great power of compulsion from the law which enabled them to threaten their debtors with imprisonment or with sale of the lands to which they clung.

10. But the surplus produce was not all that was to be got out of the rayats. They could be made to pay also in labour on the lands, generally their own mortgaged lands, which were in the sawkars' possession. Hence the Commission that enquired into the causes of the riots of 1875 declared that, through the operation of our Civil Courts, rayats often became practically the predial slaves of their creditors.

11. On the other hand, the sawkars had reasons for confining rapacity within certain limits. Unless for purposes of example, when debtors resorted to new creditors and tried to play off one creditor against another, it was not in their interest to resort to extreme measures. They had to pay some attention to the public opinion of the rayats who, also for purposes of example, were capable of occasionally killing a sawkar or cutting off his nose. Isolated instances of such examples have constantly occurred, and in other parts of the Presidency besides the Deccan. In 1875 an organized demonstration against the sawkars took place in the Poona and Ahmednagar Districts in the shape of attacks on their houses with a view to the destruction of bonds. This in fact was the immediate cause of the Relief Act. The rayats also well understand the force of boycotting, and no labour would be forthcoming for the cultivation of lands of which the sawkars became possessed against the common sense of right. It was clearly part of the sawkar's policy to make the rayats regard them as a public convenience and indispensable to their comfort, and thus they were willing to supply them not only with bare maintenance but also with the means of fulfilling their customary and religious obligations in the matter of marriages and the like.

12. As regards the exorbitant rates of interest which the money-lenders were accustomed to charge, it should be noted that by the Hindu Law the accumulation of interest is limited to the amount of the principal debt—which means that, whatever the rate, no interest in excess of the principal can be recovered on a given bond. If, therefore, the limit of interest was reached in 3 years, and the money-lender abstained, as was customary, from enforcing payment for several additional years, the rate of interest as spread over the whole time was proportionately reduced. Whenever the money-lender chose to take steps for enforcing payment, the debtor, if unable to pay in full, was obliged to pass a new bond in which the balance of unpaid principal and interest appeared as a new principal, fixing a new limit up to which interest could again advance. Under the old Law of Limitation a bond held good for 12 years, and as it was generally allowed to run its full time, the rate of interest finally reached was about 12 per cent. But by Act XIV of 1859 bonds were

made valid for 3 years only, and thus the money-lenders were obliged to alter their practice in regard to the term within which they were renewed. The consequence was that the principal secured by the original bond was increased every 3 years by the full interest which should have been paid for its use during 12 years. The money-lenders might still have adjusted their claims in accordance with their religious law, but they did not do so. The British Limitation Law supplied them at once with a suggestion and an excuse, of which they promptly availed themselves, for swelling their claims by exorbitant interest, and compound interest besides. The late Mr. Shambhu Prasad, who sat on the Riots Commission of 1875, attributed the excessive indebtedness of the rayats entirely to the operation of the modern Law of Limitation, which, he thought, had more than counteracted the prosperity following on the construction of railways, and the exceptional gain to the rayats during the Civil War in America.

13. But it is not to be supposed that the money-lenders realised on these exortionate calculations. Touching the net commercial result of their operations, the Riots Commission of 1875 (paragraph 85) found "that there is no evidence before us that the profits of the sawkars' business are extravagant. In a time of agricultural prosperity the profits are doubtless high, and individuals whose dealings are sometimes faudulent no doubt occasionally realise excessive gains. But on the whole there is no reason to believe that the sawkars dealing with the agricultural classes make higher profits than are warranted by the nature of their business, which is always precarious and unpopular, occasionally, as we have seen, dangerous." The Honourable Mr. Hope adopted this view and expressed it in still stronger language. "As to extravagant profits," he stated, "I have nowhere attributed them to money-lenders." Their interest in the land "yields them at best a precarious profit, not exceeding that which reasonable rates of interest combined with easy recovery would produce, but wrung forth with trouble, anxiety, expense, popular execration, and even personal danger."

Then it is to be noted that village sawkars trade on capital which they themselves have to borrow at high interest from richer sawkars. And as the borrowing business extended under British Rule, a swarm of petty sawkars of low type were called into existence, many of whom have done much to damage to the reputation of the sawkar class by fraud, extortion and irregularity in business.

14. The utility of the sawkars both to the rayats and to Government has been generally recognised. Lord Lytton in the Legislative Council deprecated the popular cry, "which, in so far as it is general, I believe to be unjust against that much abused but most important and useful class of middlemen on whose co-operation the agricultural industry of this country is entirely dependent." Sir Richard Temple in paragraph 20 of minute* dated 12th November 1877 wrote: "Nor do I wish to depress the money-lenders or to banish them from the Deccan. They have been specially useful during the famine of 1877 in advancing money and grain to the distressed peasantry. Even in ordinary times they have their uses and their legitimate functions in tracts so often afflicted by uncertainty of season."

15. But the opinion was reached that the advantage of the sawkars' co-operation had been purchased at too high a price. In continuance of the passage last quoted Sir Richard Temple wrote: "The Law has indirectly given them undue preponderance till they have multiplied and overshadowed the rural localities." They have in fact, while making themselves useful, completely defeated the policy of the British Government in regard to the mass of agriculturists of the Deccan. Instead of these being, as intended, peasant-proprietors interested in the best cultivation of their lands and grateful to the British Government for the new, and in their eyes inestimable, boon of property in the land on which they laboured, they are, speaking generally, in the same position as their forefathers under native rule—their property amounts to the right, sometimes the obligation, to labour on certain land for another's benefit—they have no interest of their own in its improved cultivation, often no interest in taking advantage of facilities for irrigation provided by Government—and Government, the would-be patron of their independence, appears to them as the force through which their subjection to the money-lender is maintained. Those again for whom they work, though practically farmers under Government, care only to make money in their own way and are by nature and custom wholly disinclined to devote either thought or capital to agriculture.

Objects and anticipations of the promoters of the Act.

16. The scheme for the relief of the rayats was based on the above considerations. They were to be roused from the apathy of hopelessness and custom and encouraged in an effort to

* Pages 30—35 of Selections from the Records of the Government of Bombay, No. CLVII, new series.

free their land and their labour by paying so much of their nominal debts as was morally due, on being excused the rest. New judicial facilities were to be provided in the shape of more Courts with simpler procedure for the ascertainment and adjudication of these debts, and auxiliary conciliators to promote amicable settlements. The Courts were to treat the rayats as children who do not know what is good for them, and who are wholly incompetent to deal with the astute creditors who had wrung from them impossible obligations. The power of compulsion by threat of imprisonment or sale of land was to be taken from these creditors, but there was to be no confiscation of their equitable, as distinguished from their legal and purely nominal, rights. Their past utility was recognised in spite of its abuses, and their utility for the future under just and reasonable conditions was to be preserved. There was no intention on the part of Government either to advance money for the payment of the rayats' existing debts, or of taking the money-lenders' place for the supply of their future needs.

17. The Honourable Mr. Hope explained the main principles of the scheme as follows: "The re-organisation of the Courts is favourable to all parties. The relations of debtor and creditor are adjusted on fundamental principles, equitable as between the two and essential to the cohesion of society. A man should pay what he really owes and no more, but his creditor should not be allowed to use the State for the purpose of enslaving him. On the other hand, we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in obtaining all that is fairly due to him and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum." A limit, however, was to be laid down to what was reasonably recoverable. And the rayats who had come to the end of their tether were to be invited to declare themselves insolvent.

Principal Provisions of the Relief Act.

18. The principal provisions of the Act of 1879 as altered by the two amending Acts are as follows:—

(1) Suits against agriculturists for debt or for foreclosure or possession of mortgaged property, and suits by agriculturists for the redemption of mortgaged property are within certain pecuniary limits to be disposed of by Subordinate Judges subject to no appeal, but in lieu thereof to revision at the discretion of the District Judge, or Special Judge if one should be appointed to relieve the District Judge of the duty (sections 3 and 50, etc.).

The Revision system in substitution for the Appeal system applies also to suits within the same pecuniary limits in which non-agriculturists are concerned. The experiment so far will in time require separate consideration in view of the question of extending the Revision system to the Presidency generally, but it lies outside the subject of this note.

(2) The Courts are to exercise the broadest equity, being bound to enquire into the merits of every claim from its earlist origin and to make a debit and credit account between the parties according to certain prescribed rule which allow only of simple interest at such rate as may seem proper to the Court, notwithstanding any agreement of the parties as to interest or compound interest or taking the profits of mortgaged property in lieu of interest (sections 12, 13 and 14).

(3) If possible, no cases are to be heard *ex-parte*. The agriculturist defendant is to be obliged to appear as a witness, even though he may have no desire to dispute the claim, and his admission of debt is not necessarily to prevent the examination of its history by the Court (sections 7 and 12).

(4) In suits for redemption a decree is not to be refused merely on the ground that the time fixed for payment of the principle has not arrived or that the mortgage-debt has not been completely discharged or both (section 15 A).

(5) The Courts are empowered to direct that any debt found due shall be paid with or without interest by instalments (section 20). This power of ordering payment by instalments has been extended to payments in redemption or in avoidance of foreclosure or sale or of delivery of possession of mortgaged property (sections 15 B and 15 C).

(6) Agriculturists are permitted to sue for an account in ascertainment of debt, even when there is mortgaged property to be redeemed (sections 15 D and 16).

(7) No agriculturist can be imprisoned in execution of a decree for money, and no immoveable property can be attached or sold unless specifically mortgaged (sections **21** and 22). (Clothes, implements of husbandry and cattle, and houses of agriculturists were exempted from attachment and sale by section 265 of Civil Procedure Code of 1877).

(8) But the Court can order the Collector to take possession of any surplus land not wanted for the support of the judgment-debtor and his family, and work it for the benefit of the decree-holder for any period not exceeding seven years (section 22).

(9) An agriculturist owing R50 or upwards may claim to be declared an insolvent, even though he has not been arrested or imprisoned and though no order of attachment has issued against his property in execution of his decree (section 25), and he may be treated as an insolvent by the Court on its own motion irrespective of his own wishes or the wishes of his creditors (section 19).

(10) The Court may, as under head 8, direct the Collector to manage the insolvent's surplus land for a period not exceeding seven years for the benefit of his creditors, whese claims will then be deemed to be discharged (sections 22 and 32). The agricultural produce of the land reserved for the support of the debtor and his family cannot be touched by the creditors (section 78).

(11) When an agriculturist's debts are under R50 and the Court is satisfied of his inability to pay that sum, it may direct payment of a portion and grant a discharge for the remainder (section 19).

(12) The Government is empowered to appoint Village Munsifs, one for any village and other villages within a radius of two miles—with jurisdiction in cases not exceeding R10—decrees subject to no appeal but liable to be set aside for gross partiality or misconduct (section 34, etc.).

(13) The Government is also empowered to appoint conciliators for composing disputes to which an agriculturist is party, before one of which conciliators, when appointed, every plaintiff is bound to bring his claim with a view to an attempt at amicable settlement before it can be filed in Court. An agreement come to before a conciliator is to be sent to the Subordinate Judge, who will file it as a decree if not protested against within a month. Should no agreement be come to, the conciliator is to give a certificate to such effect to enable the plaintiff to sue—decrees passed before the Act came into force must also be brought before conciliators previous to applications for execution—the conciliators have no power to compel attendance (section 38, etc.).

(14) Money-lenders are obliged, under penalty, to give receipts, pass-books and statements of account.

(15) No bonds or other instruments, whether affecting moveable or immoveable property, and however small the value, are to be valid unless drawn up by specially authorised persons styled Village Registrars, by whom also they are to be registered. Thus, while under the ordinary Registration Law, Act III of 1877, registration is optional in regard to all simple money-bonds, and all bonds, etc., affecting immoveable property under R100 in value, under the Agriculturists' Relief Law registration is compulsory in the case of *all* bonds, etc., by agriculturists even for the smallest sums (section 55, etc.).

(16) The period of limitation for suing on any registered bond, and all bonds must be registered, is extended from three years to twelve years.

The action of Government in furtherance of the working of the Act and its cost.

19. The steps taken by Government in promotion of the objects of the Act were as follows:—

(1) A Special Judge, Dr. Pollen, with two Assistants, Mr. Vishnu Moreshvar Bhide and Mr. Mahadev Govind Ranade, were appointed for the revision of the decisions of the Subordinate Judges and for generally superintending the working of the Act.

(2) The number of Courts of Subordinate Judges was increased. To begin with, while the four districts in question were divided into 37 talukas, there were only 24 Courts of Subordinate Judges. A Court has now been provided for each taluka, and at first twelve new Subordinate Judges were appointed, but work proving

insufficient in some places, the number of Subordinate Judges was reduced and now stands at 33. But there is still a Court for each taluka, the same Subordinate Judge in some cases having two Courts under him.

(3) Village Munsifs were appointed in the first instance in 138 places and attracted business in very varying quantities, in some places none at all. A great many appointments have been cancelled, and the numbers have also been reduced by deaths and resignations. At the end of 1882 their number stood at 92. But business only comes to them in large towns where they are useful to petty shopkeepers. Dr. Pollen mentions seven only as having had any work to speak of. Whether they are useful or not, their utility appears to lie almost entirely outside the scheme for the relief of the agriculturists.

(4) Conciliators were appointed on two different systems. The Sholapur District was divided into small conciliation circles, and in the three other districts each taluka was made a conciliation circle. But however desirable it is that conciliators should reside in the close vicinity of disputants, it was found that the small circle system did not answer because suitable persons for the office of conciliation could not be found within a narrower range than the taluka, or in fact, generally speaking, resident elsewhere than in the chief town of the taluka. Accordingly, except in six talukas where the system has entirely failed, conciliators are now appointed for talukas throughout all four districts. The amount of business that comes to different conciliators within the same taluka varies very greatly. At the beginning of 1882 there were in all 313 conciliators, but the number was reduced to 258 by the end of the year. Fifteen of the Subordinate Judges are also conciliators, and unless overworked, it is proposed that all Subordinate Judges shall be vested with the function.

(5) The Village Registrars were in the first instance the Village Kulkarnis—but however desirable that each village should have its own Registrar, the plan was not found to answer. The kulkarnis' other duties in connection with the collection of the Revenue call them too frequently from their villages to be available whenever wanted for registering a bond. They do not always live in their villages, and sometimes the same kulkarni officiates for two or three villages. Also there seemed reasons for doubting whether they were a reliable class for the conduct of business between sawkars and rayats. The kulkarni system was, therefore, changed into a system of circles of villages with a stipendiary Registrar in each, receiving R12 per mensem pay and 20 per cent. out of each fee. Each taluka is divided into about six circles. The success of this arrangement is still uncertain. It remains to be seen whether R12 per mensem will command persons of the desired stamp.

(6) Three Government Pleaders, paid R50 each per mensem, have been appointed in the current year as an experiment for the conduct of the cases of pauper agriculturists.

(7) Court-fees have been reduced by one-half in all suits where agriculturists are concerned and altogether in suits for redemption of mortgaged property and accounts. Registration fees payable to Village Registrars are at about half the ordinary rate.

The annual cost and loss to Government occasioned by the working of the Relief Act may be approximately estimated as follows :—

	R
Cost of Special Judge and his Assistants	54,593
Of nine extra Subordinate Judges	16,200
Of three Pleaders for pauper rayats	1,800
Loss on general stamps and Court-fees	1,72,257
Loss in Registration fees	33,447
Loss in License-tax receipts	1,73,548
TOTAL	4,51,845

The working of the Relief Act.

20. In regard to the working of the Act, I have appended to this note a memorandum of the questions which occurred to me and the answers obtained from available information and propose here to confine myself to my own conclusions. Before dealing with the operation

of the Act in its main aspect I would note the following observations on the systems of conciliation and village registration.

21. No suit to which an agriculturist is a party can take place until a conciliator has had the opportunity of inducing the parties to come to an amicable agreement. If the conciliator is successful, the agreement is sent to Court and converted into a decree; if he is unsuccessful he gives a certificate which enables litigation to commence. The following are the statistics of the system during three years:—

	1880.	1881.	1882.
1. Applications to a Conciliator made and withdrawn . . .	3,252	5,569	4,950
2. Struck off Conciliators' file in consequence of applicants' failure to appear	3,277	18,616	14,460
3. Certificates issued permitting litigation in consequence of defendants' failure to appear	9,370	25,843	23,945
4. Certificates issued in consequence of no agreement when both parties appear	6,435	11,026	7,218
5. Agreements negotiated by Conciliator and sent to Civil Court . .	6,949	8,577	9,874

These figures show (1) that creditors make great use of the system by way of merely threatening an action, (2) that a vast amount of trouble is wasted in futile endeavours to make unwilling parties appear, (3) that when both parties appear, conciliation is successful in a large half of the cases, but still fails in so large a proportion as to show again much trouble thrown away. Now if conciliators lived in the immediate neighbourhood of the disputants, the trouble of the system would not be much, but persons qualified for the office of conciliator are to be found only in large towns, and parties generally have to go as far to find a conciliator as to find a Subordinate Judge, and when found he is as complete a stranger. The conciliation process, therefore, so far as it fails, is a distinct addition to the trouble of litigation. Also it is deliberately used by debtors as a means of obtaining delay. The Judge of Small Causes Court, Poona, told me that dishonest debtors often tried to make themselves out to be agriculturists simply for the benefit of the conciliation delay. In considering whether the advantage exhibited in the agreements recorded by the conciliator more than outweighs the trouble and delay of the system generally, it must not be supposed that *all* these agreements are due to the conciliator's good offices. In many cases they are made by the parties themselves and merely taken to the conciliator for his record and endorsement. Also it has been shown that there is a disposition to abuse the system. Parties get up sham disputes before a conciliator, with a view to the record of an agreement having the force of a decree without paying Registration-fee, Court-fee, or Stamp duty. Finally, I would observe that whatever the merits of conciliation, as an adjunct to the general administration of Civil Justice, the system is especially calculated to enable some of the principal provisions of the Relief Act to be defeated. So far as conciliators are highminded, benevolent men versed in the law, their agency may promote the policy of the Relief Act, but many of them are ignorant of law and in sympathy with the money-lenders. Who is to say whether the conciliator has or has not gone behind the bond, rejected inadmissible claims and pointed out flaws? The Special Judge and his assistants can only examine the conciliators' record where all seems fair and reasonable, and creditors are shown as agreeing to abatements at much the same rate as those enforced by the Courts; but they cannot go behind the record, and for aught they know abatements are agreed to after original over-statement of the claims. When the supervision of the Special Judge, a temporary officer, is removed, it is impossible to say what unsuspected abuses may spring up.

The conciliation system is popular with creditors, and is, I am told, regarded by them as the one provision in the Act that serves their interest. Through it they can obtain in certain cases cheap decrees. There is no objection to this. If parties will settle their disputes in conversation with the third party, and without giving other persons the trouble of attending as witnesses (a trouble which should be diminished by every admissible device whether in the administration of Civil or Criminal Justice), they may well be saved the cost of a regular suit. Also I am far from desiring to decry the benefit of conciliation when conducted by competent persons. But the defect of the present system, in my opinion, is that the attempt at conciliation so often futile, and so liable to abuse, is made a *sine qua non* before any suit affecting an agriculturist can be entertained in the Courts. No good is gained by trying to

make people agree who do not want to agree. The law should provide that whenever *both* parties desire to get their dispute settled, if possible, through conciliation instead of through a suit in Court, they should have the opportunity of doing so, otherwise they may go to the Court at once. The Civil Procedure Code already enables this to be done through a selected arbitrator, but it would make matters much easier for parties if qualified official arbitrators were appointed under the name of conciliators. I do not think that the Subordinate Judges should be, as at present, themselves conciliators, because people are apt to get warm even in a friendly discussion, and if a party refused to follow what a Judge considered to be reasonable advice, the Judge might have a bias in his mind against him when afterwards hearing the cases as a regular suit. The Clerk of his Court, however, would be a suitable conciliator, as also any retired Subordinate Judge, or Mamlatdar, or respectable ex-Vakil resident at the same place who might be willing to aid Civil Justice, as Honorary Magistrates aid Criminal Justice. When an agreement has been come to before a conciliator, the parties should take it straight to the Subordinate Judge to be filed.

22. The existing system of village registration, to which I next beg attention, is, in my opinion, an unmitigated nuisance to the people. It is grievous to them that every bond, for no matter how small a sum, should have to be registered. Every receipt even must be registered. The system would be bearable only if a Registrar could be appointed in every village, but, as already stated, this has been found impracticable. Now all parties to a bond, including the sawkar, or his agent (under power-of-attorney) with attesting witnesses, and perhaps also identifying witnesses have to go some miles to find a so-called Village Registrar. The sawkar resident in a market-town has in the same day to send his agents in different directions to find the different Registrars. All this has to be paid for in the long run by the borrowers and constitutes a most disproportionate addition to the sums due on small loans. The law also defeats in its own object—the prevention of fraud. Some forms of fraud are assisted by registration, and money paid to a borrower in a Registrar's presence may be taken back from him when the parties have left his office. The trouble of registration leads to loans unsecured by writing and accompanied therefore by risk, which must be paid for. In many registration circles little or no registration takes place, and the Registrar draws his R12 per mensem for nothing. Again rayats, of superior status whose circumstances rarely oblige them to borrow feel it a hardship that they should have to do so in public. On the other hand, one great object of village registration as affecting liens on land is not attained. No intending purchaser of land can discover in the village where it is situated how far it is encumbered. In my opinion the registration of every instrument affecting title to immoveable property should be compulsory, and should be effected by the properly qualified Sub-Registrars of taluka towns, and the kulkarni of every village where the land is situated should be furnished with a note of the registration, which he should enter in an index-book against the number of the holding referred to. His custody of actual copies of the registered instruments could not be relied on, but his book would be a clue to their discovery in the Sub-Registrar's office. The registration of mere money bonds should not be compulsory in the case of sums below R50.

23. The general conclusions that I have drawn from the discussion of the whole subject are as follows.

The Relief Act has been undoubtedly beneficial to the rayats so far as it has gone. It has eased their shoulders of the dead weight of debt just as they were rising from the prostration of famine. It has enabled a certain number, small as yet and mainly in one district (Satara), to redeem* their mortgaged lands. It has scarcely, if at all, affected the credit of solvent rayats—and loss of credit on the part of poor rayats has not shown itself in abandonment of holdings, the sale of holdings for realization of assessment, or the sale of cattle to any noticeable extent.

* Mr. Woodward reports (11th paragraph) that the redemption suits in the Satara District are mainly by cultivators against cultivators.

But whether as regards the great body of poorer rayats the Act will be permanently beneficial and popular, remains to be seen. It has not yet been tested by the inevitable bad season, and run of bad seasons. It cannot be denied that great injustice has been done to the money-lenders with the result of so impairing the credit of the poor rayats as to make it extremely difficult, if not impossible, for them to obtain the loans that have hitherto been regarded as indispensable to correct the vicissitudes of their agriculture, and to enable them to pay punctually the Government assessment.

24. The defect of the Act has been made patent. While debtors have been given more equity than is good for them, creditors have been given no equity at all. Claims founded on risk have been cut down on the plea that the risk is to be removed, and then the risk has been enormously increased. The intended compensation, namely, seven years' profits of the debtors'

surplus land, has proved to be worthless. The surplus lands of an indebted rayat produce no more than enough to feed those who labour on them.

25. It is not too much to say that the sawkar's power of legally compelling an agriculturist to pay his debts has been abolished. It is waste of time to examine how claims are disposed of in Court. The Judges may pass the most equitable decrees, conciliators may negotiate the most reasonable compromises, payment may be ordered by the most considerately calculated instalments, but this is paper—payment of anything at all rests entirely within the debtor's discretion. He now takes his crops to his own house, instead of as formerly to the sawkar's and he gives the sawkar what he thinks proper. The great point to understand in regard to the operation of decrees against him is that their actual execution produces little or nothing, and means generally to the decree-holder trouble, and vexation, and good money thrown after bad. Their power used to consist in the threat they carried of imprisonment, and sale of house or land, and this power has been taken away.

26. When it is considered how under this state of law the sawkars can ply their business, it is found that they have clients who are proud to keep clear of the Courts, and whose dealings with them, according to custom, continue without heed to Limitation Laws, Relief Laws, or any other laws. The sawkar can place much reliance on a rayat's word—but not if he has no property to back his word. The man with no property has not much self-respect and will not make the effort necessary for satisfying his obligations unless compelled. This is the case with at least half the whole number of rayats. To them the sawkar who conducts his business on regular principles will lend no more. If they obtain loans at all, it will be from sawkars of a lower type who speculate in extortion, and are prepared to adopt modes of compelling payment such as were in force before the establishment of Civil Courts.

27. When it is next considered how, without borrowing, these rayats can maintain their status as land-holders, the conclusion seems to be that all depends on their ability to replace loans by savings from the wages of labour. Sometimes a few members of a rayat's family leave the home fields for work elsewhere, and sometimes the whole family takes its departure It is to be gathered from Mr. Woodward's Report that in certain parts of the country either entire holdings, or portions of holdings have been thrown into fallow for want of loans, but the rayats nevertheless have stuck to their holdings, paying the assessment from the wages of their labour, and hoping to be recouped when they can resume cultivation with the help of savings in exceptionally favourable seasons. This information is satisfactory, and should be placed to the credit of the Act, but it must be remembered that during the three years of the Act's operation, savings from wages have been possible because grain has been extremely cheap. Moreover, when hard times come, it cannot be supposed that the expedient of supplementing agricultural receipts by the earnings of labour will be open to the great mass of rayats who will find themselves in straits. Many will be too proud to adopt it, and others will be too poor to transport themselves where employment is to be found. Much depends on employment being brought within easy reach. So far as the rayats from choice or need confine themselves to the cultivition of their own dry-crop lands, it would be folly to wait for a bad season or run of bad seasons to demonstrate their need of loans. It is obvious that the rayat without capital must anticipate his crops, for the sake of which also both seed and labour are too often thrown away.

28. So far as the Act contemplated the relief of these rayats from the burden of their existing debts through insolvency it has completely failed. The rayats are too proud to claim, or accept the relief of insolvency, especially as they have nothing to gain by it.

29. Mr. Justice West has contributed a paper for the assistance of Government in which he shows that the condemnation previously passed by him on the principles of the Relief Act is not affected by the information supplied by Mr. Woodward, and this has been answered by Mr. Ranade in a memorandum concurred in by Dr. Pollen. Mr. Ranade points out that the Act may be regarded as in three parts. The first is good, and should be permanent, namely, that which provides for the equitable revision of contracts entered into between Parties so unequally marched as savkars and rayats. The correctness of this principle is admitted by Mr. Justice West. The second is wholly inoperative, namely, that which provides for the general relief of rayats through insolvency, and may be treated as a dead letter. The third, which restrains the savkar from the coercive measures necessary to the recovery of what is due to him after its equitable revision, would be opened to Mr. West's condemnation if it were treated as permanent; but in Mr. Ranade's opinion it should be treated as temporary, and as such is fully justified by the agrarian riots of 1875, and by the subsequent famine. Also this temporary restraint of savkars is absolutely necessary as a condition precedent to any general liquidation of their claims through money advanced from other sources. I am not

aware that any part of the Act was intended to be temporary, but as the part emphatically pronounced to be its key-stone has crumbled away, the revision of the whole scheme of the Act would seem to be inevitable.

30. In considering what might now be done in the interests alike of money-lenders and of rayats, two separate matters must be kept constantly in view, (1) the liquidation of the existing debts of the non-solvent portion of the agriculturist community; (2) the facilities that are necessary to all agriculturists for obtaining loans in future.

31. The liquidation of debts would be in consideration of composition for smaller sums, and might take one or two forms. Either the creditors might be given an authoritative assurance of repayment, without further trouble to them, by instalments spread over a number of years, or they might be paid cash down once for all.

32. In the former case no money would have to be advanced by any third party, but the instalments would be recovered from the debtors by Government, on behalf of the creditors; and by "authoritative assurance of payment," I mean that after the composition settlement the Government would undertake, so far as possible, to collect the instalments as arrears of revenue from the debtor's land, without incurring any responsibility for the result, and with the reservation of full discretion to postpone collection in a bad season. Also in order that Government might not be committed even to the endeavour to collect beyond the debtor's capabilities, the rate of instalment should be fixed in strict proportion to the amount of the debtor's assessment. This, however, could scarcely be less than 20 per cent. It is estimated that the nominal debts of the Deccan rayats generally are eighteen times the assessment, and, supposing them to be compounded for one-third of that amount, it would require instalments at the rate of 20 per cent. on the assessment to liquidate them in 30 years, and that without further interest.

In fixing the rate some regard should be paid to the debtor's ability to earn wages by labour. It has been held by some that creditors have no business to lend beyond the value of the debtor's actual property, and that to lend on the pledge of future labour is wrong, and should be discountenanced by the Government as conducing to a state of slavery. It is on this reasoning that justification is found for persuading rayats to declare themselves insolvent even though they are able, through the wages of labour, to pay, as they always have paid, something to their creditors every year. The rayats, however, will have nothing to say to this doctrine, and the right conclusion seems to be that liability to labour in satisfaction of debt should be recognised not for the debtor's natural life and still less from generation to generation of his descendants, but for a limited number of years.

33. If liquidation take the form above explained, it will not touch the question of the future ability of agriculturists to borrow, while so much of insolvency will enter into it, that those benefited will find their credit impaired. Sooner or later the Government will have to consider whether the present restrictions on the power of creditors to enforce payment of decree-debts against agriculturists can be maintained.

34. Liquidation by payment of cash down in full and immediate satisfaction of the claims compounded would be far more acceptable to the creditors, and could be effected through the advance of money either by a bank, with the help of Government or by Government alone. I will here note in detail the scheme now under negotiation of an experimental Agricultural Bank for one Taluka Purandhar.

(1) As a preliminary measure a Commission is to enquire into the indebtedness of the rayat community whether hitherto litigant or non-litigant. This means, I am told, but more precision is necessary, that where either debtor or creditors may desire a settlement of debts by composition, an inquiry is to be held by the Commission. If a friendly settlement can be arrived at, so much the better, if not, an authoritative award must be obtained from the Civil Courts; but the proceedings are not to be regarded as insolvency proceedings. The object of these enquiries is twofold—(1) to enable the promoters of the bank to form an opinion as to the safety of their undertaking before they are committed to it, and (2) to determine whether each debtor whose affairs are enquired into is qualified for the liquidating advance by the discovery that *all* his debts can be brought either by agreement or award within the value of one-half of his property.

(2) Government is then in the first instance to advance the money necessary for the satisfaction of the compromise or the award, but no advance is to be made except on security of land, or for a greater amount than 75 per cent. on the value of such security.

(3) Within two years the bank is to repay the advance made by Government, together with interest at 4 per cent. The rayat will then be a debtor of the bank, which will have a first mortgage lien on his land in security of repayment.

(4) The rayat is then to make such yearly payments as will cover interest on his debt to the bank not exceeding 9 per cent., together with a payment of from one or three per cent. in liquidation of principal.

(5) In case of default of the payment due in any year, the Collector is to use such means of recovery on the bank's behalf as would be open to him in the case of arrears of land revenue. But this aid is not to be given in any year when remission or postponement of revenue collection may be necessary.

(6) In consideration of the aid given by Government, the bank is to limit its rate of interest to 9 per cent. and to submit its books to audit, etc., etc.

35. In regard to this scheme I would observe, *first*, that however useful it may be in the the case of nearly solvent debtors, it will afford no relief to the great body of poor rayats who form at least 50 per cent. of the whole number, and in their case both questions of relief from present debt, and future ability to borrow will still have to be considered.

Secondly, however useful for the liquidation of the existing debts of nearly solvent rayats at the first set-off, it seems very doubtful whether the bank will be able to hold its own against the competition of private sawkars as regards its future business. Those sawkars have custom and tradition on their side, and are from policy sympathetic with the rayats, and considerate of their convenience, while the bank will of necessity be a rigid mechanism. Solvent rayats will be able to borrow from sawkars at as low interest as from the bank, while those who would have to pay higher interest to sawkars would find compensation in the feeling that they might play tricks with them which they could not do with the bank. It has been amply proved that the sawkars lend as much on personal security as on land, while the Bank can only lend on land. It is true that the bank is expected to draw into its organisation the best of existing sawkars as shareholders, agents and brokers, but their corporate action cannot follow the principles that would guide them as individuals. In so far as they act on such principles irregularly as the agents of the bank at market towns, they will have a double action, and the clients will have to pay for their irregularity besides paying to the bank.

The bank's chances of success in future business may safely be left to the consideration of its promoters, but they should, I think, be made clearly to understand that they must not found their anticipations of success on the continuance of the Relief Act as it stands. So long as that Act is in force, private sawkars would be heavily handicapped in the competition. While the bank would be aided free of cost by the Government Revenue establishment in the collection of its debts, the private sawkars would be disabled from using the ordinary modes of compulsion which the Law permits as against other than agriculturist debtors. I lately asked some members of the Bank Promotion Committee if they had considered the possibility of the Relief Act being, sooner or later, altered as regards its execution provisions. They answered that they regarded the Relief Act as faulty and had intended their scheme as a substitute, but whether the substitute would be needed or commercially profitable supposing the Act to be repealed, or improved was a question which had not as yet occurred to them. The Government should avoid all moral responsibility for preserving the faults of the Act in the interests of the bank, which can only benefit one section, and that probably a small section, of the rayat community.

36. I now pass to the question of advances by Government in place of a bank as considered in reference to (1) the liquidation once for all of existing debts, and (2) the agriculturists' need of future loans.

In the first connection it appears that if the total debts of a rayat in relation to his ability to pay are, as in the bank scheme, to be settled by Commission, if his land is to be made available for security when freed from all encumbrances, if instalments in repayment of the sum advanced for liquidation are to be made recoverable as arrears of land revenue, it is difficult to see why Government should not advance the money direct, instead of through a bank, and so save the debtors some 2 or 3 per cent. interest. The bank would discharge none of the useful functions of a medium between Government and the rayats. The use of the bank Government would be a medium between the bank and the rayats. But if that risk is only would be to save Government the risk of losing the money advanced. But if that risk is only what the bank is itself willing to run, it will not be serious, and scarcely more than would be covered by the difference of interest which Government would receive as between 4 per cent. and $6\frac{1}{4}$ per cent.

37. In regard next to Government advances in connection with the needs of rayats for future loans, the Government have from the first been empowered by law to make advances called "Tagai" for agricultural purposes, and Mr. Woodward has now proposed that advances should also be made in liquidation of debt. Experience has proved that the conditions under which these advances are obtainable are not adapted to the needs and habits of the rayats. "What they want," Mr. Woodward writes (paragraph 13), is "prompt advances and on the spot." They are repelled by the formalities and minute enquiries which precede the grant of an advance. New rules were issued as lately as the 26th March last. They are specially devised to suit the rayat's convenience in the matter of mode and time of repayment, and they provide for advances being made on the security either of land or of personal sureties, but they do not touch the principal causes of the rayats' disinclination to avail himself of this form of help. Mr. Crawford, the Commissioner, Southern Division, tells me that in order to avoid the delay of reference to the Assistant Collector, he has under consideration a scheme for dividing each taluka into circles, each of which would be placed under a special member of the Mamlatdar's establishment, who would be authorized as a Deputy of the Mamlatdar to sanction advances on his personal responsibility. The real cause of failure of the "Tagai" system appears to be that Government officers are averse from incurring this personal responsibility, and therefore do not press the intended accommodation on the acceptance of those who need it. If the responsibility is to be incurred, it must be paid for, and this consideration would seem to suggest that the agent of Government in the matter should be some form of middleman paid from profits, rather than any salaried officer of Government.

38. But I hope I may be pardoned if I here submit the plan which the study of the whole subject of the rayats' relief has suggested to me as the best if practicable. It is based on the belief that the rayat will not co-operate with Government in its endeavours to free him from the sawkars' thraldom unless satisfied that he will be able in future, as before, to obtain loans for all his needs, domestic and agricultural, promptly, and in small sums as from time to time required; that it is undesirable for Government to take the sawkars' place; that Government might supply, the money for loans, but some medium must be interposed between Government and the borrowers, with a view to safety in lending, and screening Government from the odium of enforcing repayment; that it is desirable however to save the rayats from having to pay the profits and working expenses of either a bank or a middleman; and that the desired medium exists in the shape of the village communities.

To enable the idea to be judged I have thrown it roughly into the shape of working rules, which I wish to be regarded as merely exhibiting one way of giving effect to it. Much discussion would be necessary to the discovery of the best way.

(1) Advances should be made by Government to occupancy-holders, not on the security of their holdings, but on the personal security of all the assessment payers of the village community to which the applicant belongs.

(2) A Committee (Panchayat) should be elected in every village for the purpose of representing the community in the matter of responsibility for advances. The Committee might consist of five, of whom three would consititute a *quorum*. Each Committee should have the services of a Secretary, possibly one of its members, receiving a percentage on advances.

(3) Every application for an advance should be addressed to the Village Committee, which, if satisfied that the advance can be safely made, should endorse the application, and, on their endorsement, the money should be paid at the nearest Government treasury. If made payable to bearer, the order could no doubt be cashed in the village.

(4) Any sum so advanced should be made recoverable with interest at 6¼ per cent. by instalments calculated so as to wipe out the whole debt in a reasonable number of years, in the shape of an addition to the applicant's ordinary assessment.

(5) In the event of default to pay any such debt-instalment, the amount of the same should be debited to the Village Committee, and the total of such debits in the year should be rateably recovered as additional assessment from all the occupants of holdings in the village.

(6) In the event of such recovery having to be made, the Village Committee should be empowered with the sanction of the Mamlatdar to recover the amount due from each defaulter as in execution of a decree, without any further legal proceedings. When recovered it should be paid into the nearest Government treasury and placed to the credit of the Village Committee in reduction of future liabilities.

(7) In the event of any rayat wishing to pay off his existing debts on the principle of composition for ready money, or in the event of the creditors of any rayat desiring to have their claims paid off on this principle, the Village Committee should call all parties concerned before them, and if able to promise their support to an application for an advance which the creditor would accept in satisfaction of their claims, the Committee should draw up a report of their proceedings and submit it to the nearest Subordinate Judge, who should summon the parties, and if finding no objection, pass an award on which the money would be advanced by Government and to which would be attached the legal effect of extinguishing the debts compounded. The sum awarded to each creditor should be paid in the presence of the Subordinate Judge.

(8) Whenever land is freed from mortgage by an advance obtained through a Village Committee, the Committee should have the first mortgage lien on such land until the advance has been repaid.

(9) Assuming that Government are able to borrow at 4 per cent. the money necessary for these advances, which would be recoverable at 6¼ per cent., they will have at their disposal the difference at the rate of 2¼ per cent. Against this will have to be set first the percentage and stationery expenses of the Secretary to the Village Committee, and the cost of any necessary addition to the Mamlatdar's establishment. The remaining difference might be set apart and used from time to time in making good losses to the village from debts that have to be written off as irrecoverable, should such occur. The final profit might be paid to the taluka Local Fund Committee for expenditure on objects in which the villages are specially interested, or, if considerable, to hold in deposit against a time of famine.

39. Of course no occupancy-holder could be made to contribute to payment for another's debts without his own consent to the arrangement. And though by way of illustration I have sketched the scheme on the assumption of its being unanimously accepted by a village community, I am far from supposing that such unanimity could be easily, if ever, attained. Not much reliance can be placed on the public spirit of villagers at the present day; there are parties in every village; solvent rayats may not consider the power of borrowing at 6¼ per cent. a sufficient inducement for accepting the risk of having to pay other people's debts; and there will be individuals in very village whose interests are positively opposed to the scheme. But unanimity is not absolutely necessary. If in any village a sufficient number of sufficiently solvent occupants agree to form a Union, the others may be excluded alike from its benefits and its risks. If the scheme is sound, many at first unwilling may be expected to join afterwards. I think the scheme is sound. Traditions of village co-operation in past times would support it. It would practically provide every village with its own bank. If village sawkars can lend with profit money borrowed at high interest from other sawkars, a village Union can lend with safety money borrowed from the public at 4 per cent. The managing body would be intimately acquainted with the affairs of clients, and clients would be influenced by a watchful public opinion to be faithful to their obligations. Members would be accommodated with loans at 6¼ per cent. interest, and the whole village would benefit by the profits. It is easy to see that the scheme might be abused. Persons might get advances at 6¼ per cent. for the sake of lending to others both within and without the Union at higher interest. But only very solvent persons would get such advances, and an abuse might be pardoned that brings in 2 per cent. Many improvident occupants might in this way find means to plunge as deeply into debt as at present, but still all who desire to be independent, and their number is probably not inconsiderable, would have the opportunity.

40. Whatever scheme is tried will in the first instance be pure experiment. But there seems no way of arriving at the true course to adopt without experiment. Two or three different experiments might with advantage be tried simultaneously in different talukas. What is wanted is a law enabling all experiments to be tried that have any prospect of success. All schemes discussed in this note would obtain effect through a law providing (1) for the judicial settlement of debts susceptible of composition; (2) the ability to recover as arrears of land revenue, with certain limitation as to rate of instalment money advanced to agriculturists for any purpose by Government, or by an Agricultural Bank in contract with Government; (3) the same ability in regard to recovering from occupancy-holders who give security to Government; (4) the same ability in regard to recovering debts due to private parties which have been the subject of judicial composition.

41. In considering whether perference should be given to any of the schemes enumerated over others, it may be noted (1) that a general liquidation of debts either by Government alone, or by Government in co-operation with a bank, is open to some danger of collusion in the settlement between debtors and creditors as founded on the hope that in the long run strict repayment will not be insisted on, the loss being borne by Government, and (2) that the security for any repayment rests on the attachment of the rayats to their land, which however real at present, is after all in many cases a mere sentiment that might conceivably be affected by altered times and progress of education. The scheme of liquidation sketched in paragraph 32 by recovering instalments of debts on behalf of creditors without any advance of the money by Government or the bank would avoid these dangers. The scheme sketched in paragraph 38 of aiding villages to do their own banking business might simultaneously be tried.

42. No treatment of the subject would be complete unless it included a consideration of the way in which, if eventually found necessary, the provisions of the Relief Act might be altered so as to restore to money-lenders a reasonable power of compelling agriculturists to pay their debts. On this point it has occurred to me that some application might be made of the principle of the Agricultural Bank scheme, that, namely, of giving a creditor certain facilities for the recovery of debt in consideration of his observing certain conditions as regards rate of interest, form of accounts, etc. An agreement might be entered into with an individual sawkar, as well as with a bank or, rather, the principle of an agreement might be made the basis of law in regard to individual sawkars. I would not assist a sawkar by recovering his debts as arrears of land revenue in the manner proposed for the Bank, but it would be a strong inducement to him to comply with reasonable conditions, if he were enabled (1) to obtain a decree for his debt without the trouble and expense of a regular suit, and (2) to use effectual means for executing it when so obtained. The law might be that if a money-lender will cause a debt-bond to be registered (it being made the Registrar's duty to make sure, as far as possible, that the borrower understands the consequences of what he is doing and receives the full consideration set forth in the bond) and if he will limit his interest to 9 per cent., and if he will do all in his power to make the debtor keep a pass-book (giving it before witnesses, and replacing it whenever lost), to show receipt of every repayment, he, when desiring to recover, should be allowed, on mere production of his registered bond and ledger account to apply for an order entitling him to recover the balance shown to be due—notice should then be served on the debtor calling on him to produce his pass-book if he desires to contest the correctness of the sum claimed from him—no evidence of repayment not entered in the pass-book should be received. The debtor if claiming to have made any payment not entered in the pass-book would be at liberty separately to sue the creditor on that account, but the order for him to pay would, in the first instance, issue after mere inspection of the bond, ledger, and pass-book if produced. Liberty should be reserved to the Court to order payment through itself by instalments, but on the first failure to pay an instalment the creditor should be authorised to proceed against the debtor's immoveable property as he could have done before the passing of the Relief Act. In the case of those creditors who do not comply with the implied conditions, recovery should be possible only through regular suit, but the same procedure of first ordering payment by instalments, and on first default, authorising process against immoveable property should be observed.

As regards the order to pay instalments, it should further be provided that the amount of each instalment bear some definite proportion to the total amount of debt. It is not right for instance, that a Court should have, as at present, the power to order that a debt of ℞100 be paid by yearly instalments of one rupee, or in fact one anna.

43. The first opportunity should also, in my opinion, be taken for altering the law regarding conciliation and village registration for reasons stated above in paragraphs 21 and 22.

August 1883.

C. GONNE.

No.

APPENDIX.

Examination of the working of the Relief Act.

The questions to bear in mind in examining the results of the Act appear to fall under the following three heads :—

I.—Is the Act working as intended in regard to the extrication of the rayats from hopeless debt and enslavement to the money-lenders?

II.—Is it doing so through confiscation of the sawkar's equitable, as distinguished from their old legal rights, and inducing them to throw up their business and leave the country?

III.—Is it so far destroying the rayats' credit as to prevent them from obtaining the loans indispensable to their agriculture and to the comfort of their daily lives?

The sub-questions appearing to fall under these three heads are stated below in the margin against the paragraphs which note the answers to them derivable from the papers before Government and from conversation with well-informed persons.

First head of Enquiry.

1. Are the rayats taking advantage of their power under section 16 to sue for an account as the first step towards paying off their debts?

Answer.—No, except in connection with the redemption of mortgages. They see no advantage in doing so and prefer to leave their creditors to take the first move.

2. Are they taking advantage of Chapter IX to obtain from their creditors receipt pass-books and statements of account?

Answer.—No, though every opportunity has been taken by the Courts for recommending the practice to them. They will not take the trouble. It is only by action on the part of officials that any breaches of this part of the Law on the part of creditors will be brought to light.

3. Are they acquiring habits of economy and providence?

Answer.—Mr. Woodward and Dr. Pollen are satisfied that they are. There has been a run of fair seasons since the Act came into operation, and the poorer rayats have received into their own houses the crops which before were always taken to the sawkar's house, but they know that for the present at least they cannot hope for fresh loans. Mr. Woodward (paragraph 5) is satisfied that the expenditure on marriage and other ceremonies has been greatly reduced and that the fashion in this matter has changed.

Dr. Pollen writes in his 65th paragraph: "He (the rayat) has learned in a measure to be thrifty and provident. He is no longer beset by the necessity of borrowing at every turn. I have been told that for months beforehand the rayats now begin to make preparations for the payment of the assessment by selling grass, ghee, goats, cows, and so on, and last of all, their grain." But this is the case more in some talukas than in others.

4. Are they generally taking to resist claims that they would previously have apathetically submitted to?

Answer.—It appears so. The percentage of purely agriculturist cases on all cases heard under the Revisional system was 36 in 1880, 47½ in 1881, and 64 in 1882, and the percentage of contested cases was 24 in 1880, 30 in 1881, and 38 in 1882. But these proportions have been affected by variations in the definition of the term "agriculturist" (Dr. Pollen's paragraphs 7 and 20).

5. Are the rayats using their ability to obtain orders for payment of their debts by instalments so as to indicate a determination to liquidate their debts in this way?

Answer.—There is no provision of the Act that the rayats appear to appreciate more than the privilege of repayment by instalments, but there is no evidence yet of its being systematically used by them. Dr. Pollen to whom I put the question says: "The Courts usually direct that all instalments should be paid *through the Court*, but my impression is that this direction is as often disregarded as not, the debtors preferring to pacify their creditors from time to time by piecemeal payments made out of Court."

6. Are they moving in the matter of the redemption of their mortgaged lands, and with what results?

Answer.—Yes, greatly aided and encouraged by the action of Government in remitting Court-fees in these suits and by the alteration of Law permitting mortgage debts to be paid by instalments. In 1882 there were 1,244 suits for redemption as against 733 in the previous year, and these were only the suits falling under the Revisional system presided over by Dr. Pollen. There were also 1,194 redemption suits, which, as not falling within the pecuniary limits of the Revisional system, were brought before the Courts under the ordinary Appellate system. Thus the total of suits for redemption amounted to 2,438, being over 14 per cent. on the entire litigation of the year. It is in these suits that the obligation of the Courts to go behind the bond and to allow the mortgagee interest at a reasonable rate, instead of, as generally agreed to, the yearly profits of the mortgaged land, has produced the most important operation of the Act. So far as Dr. Pollen has been able to arrive at proportions, he finds that the rayat plaintiffs were wholly or partially successful in nearly 39 per cent. of the total number of redemption cases, while 30 per cent. were disposed of on amicable compromises more or less favourable to the plaintiffs. In more than 200 cases the plaintiffs got back their land free from encumbrances without having to make any payment. In a still larger number of cases the mortgaged debts were found to be so reduced as to bring redemption within easy reach of the debtors. In one case the plaintiff got back his land with a small refund of money besides. But these redemption suits are brought far more in the Satara District than in the Poona, Ahmednagar or Sholapur Districts (Dr. Pollen's paragraph 22). In fact there are more of such suits in the Satara District than in the three other districts taken together.

It is too soon yet to judge of the extent to which rayats will be enabled to redeem their

mortgaged lands as it remains to be seen whether in those cases in which redemption has been decreed on payment of instalments, the debtors will be able to pay those instalments or not, and it is to be noted that Mr. Woodward in his 11th paragraph writes that the redemption suits in the Satara District are "mostly by cultivators against cultivators."

7. Are they taking advantage of the Insolvency sections?

Answer.—These sections provide for (1) applications for the benefits of insolvency by the debtor himself, and (2) acceptance of those benefits when pressed on the debtor by the Court. The answer to the question is, emphatically, that the rayats will have nothing to do with insolvency in any form.

Mr. Woodward writes in his 18th paragraph as follows: "Instances have occurred in which the Subordinate Judge, desirous of bringing this part of the Law into practice, has signified his intention to the debtor of declaring him insolvent. The latter, far from appreciating the benefits to him of insolvency, has implored with tears that he may be spared the indignity. Even in the few cases where the Judge's exhortation has induced the debtor to consent, the latter after leaving the Court has usually reconsidered his resolve, and by failing to present his petition with a list of goods and chattels annexed, has rendered further proceedings impossible." And then Mr. Woodward goes on to say that the feeling in the mofussil against insolvency is so strong that to put its compulsion within the power of creditors is to furnish them with "new means of terrorism and exaction."

Dr. Pollen writes in his 25th paragraph that the Subordinate Judges all report that the rayats whose debts are found to amount to less than R50, when pressed to accept the benefits of section 19, "indignantly refuse to profit by the indulgence and offer to pay the amount found due to their creditors by easy instalments."

If it be thought unlikely that these poor ignorant people should be so deeply imbued with a sense of honour, it is not difficult to trace it to utilitarian reasons. The rayat community knows the convenience of borrowing on personal credit. The money-lenders have been accustomed to lend a great deal on personal credit, but could not have done so if the repudiation of debt were popularly approved. Public opinion, therefore, in this matter, as also in the matter of liability for ancestral debts, supported the money-lender with the force of religious sanction which still survives after over half a century of the British system. Besides which it is pointed out that the indebted rayat has now nothing to gain by incurring the disgrace of insolvency. The Law which places his land, house, clothes, cattle and implements of agriculture beyond the reach of attachment has practically already conferred on him the benefits

of insolvency without the disgrace. Lastly, he has generally mortgaged land in the creditor's possession which he hopes some day to redeem, and he fears that as a declared insolvent he will be for ever cut off from this.

8. Are they receiving assistance from the Courts through the agency of the Collector under sections 22 and 29 of the Act, which contemplate the extinction of debt through payment to the decree-holder or creditors of the profits of their land as managed by the Collector during seven years?

Answer.—The first of these sections provides for the satisfaction of a single decree against a debtor, and the second for the rateable satisfaction of all his debts in the same way, namely, by the Collector assuming the management of all his land, save so much as may be required for his support and the support of his family, and working it for the benefit of the decree-holder or the creditors generally, as the case may be. This is an insolvency provision based, however, on the belief that it will provide for the gradual satisfaction of all the equitable claims of creditors within a period of seven years. The Honourable Mr. Hope in his speech before the Legislative Council pronounced this to be "the key-stone or test point of the Bill," adding "if it works well, the rayat's credit will be secured on a satisfactory basis; if otherwise, his borrowing even for reasonable purposes within the limits of his true means will become most difficult."

It is, therefore, most disappointing to find that Dr. Pollen (paragraph 31) records: "This well intentioned provision of the Law continues practically to remain a dead letter." The Subordinate Judges have been urged to give it special attention, but their replies "reveal a remarkable unanimity." They have all kept the provisions of the section steadily in view and have endeavoured to find out suitable occasions for the exercise of the powers given by it to them, but they have failed to find any." And the reason is clear. The rayats who have reached the insolvency point have no surplus lands in their possession. They have already mortgaged all such lands with possession to money-lenders, and have been left with what is barely enough to yield them a scanty maintenance. If they had any surplus lands, they would of themselves satisfy the decrees against them without waiting for any execution of them by the Court. Again, decree-holders would certainly move the Courts to apply the section if their debtors had any surplus lands on which it could operate.

Mr. Woodward in his 19th paragraph writes to the same effect. Passing the difficulties which would attend the Collector's management of portions of petty holdings scattered over his district, the embarrassments attending any dispute as to the title to such portions of holdings and the question who is to pay, supposing the Collector's management results in loss, Mr. Woodward writes: "Debtors with a surplus estate beyond their real necessities seldom figure in the Court at all. If a decree be passed against them,

they will satisfy it without permitting the creditor to apply to the Court. * * * As great importance is justly attached to a fair trial of this section, I have taken peculiar pains to endeavour to discover whether and how it is workable, and, if not, the real reasons of its failure. In so far as I am aware, there are no instances of creditors, the persons most interested in the success of the measure, applying to the Courts to enforce it. * * From the Judges and Collectors whom I have personally consulted on the subject downwards I have not heard one single opinion in favour of the measure nor gathered a hint as to how it is to be made practicable."

The only room for its application appears to be the very rare cases in which a dishonest debtor, taking advantage of the exemption of his person from arrest and of his land from attachment, endeavours to keep more than he wants for mere maintenance without paying his debts.

9. Has the Conciliation system worked satisfactorily whether as regards the stamp of person found available for the office, or the proportion of cases which have been settled in this way without further litigation.

Answer.—In his 51st paragraph Dr. Pollen quotes Mr. Ranade as reporting that in the Poona and Satara Districts " 6 Sirdars, 9 pensioned Mamlatdars, Subordinate Judges, etc., 22 Inamdars, 27 Watandars, 14 Government servants, 2 Vakils, 11 sawkars and about 19 others make up the present list—this enumeration will show that a very large majority of the men selected belong to the gentry and-some of them have the highest social status"; and again "the success of the Conciliation system has been very satisfactorily established and fully warrants the continuance of the experiment on the present lines." Mr. Bhide's expressions of approval are equally emphatic. He writes: "The Conciliation system has proved itself highly beneficial to both the sawkar and the agriculturist debtor." Dr. Pollen himself considers that the "experiment has worked in a fairly successful manner, and that the results for the year under report exhibit an unmistakeable improvement."

The following is a summary of the Conciliation statistics :—

	1880.	1881.	1882.
1. Applications to a Conciliator made and withdrawn . . .	3,252	5,569	4,950
2. Struck off Conciliators' file in consequence of applicants' failure to appear	3,277	18,616	14,460
3. Certificates issued permitting litigation issued in consequence of defendants' failure to appear .	9,370	25,843	23,945
4. Certificates issued in consequence of no agreement when both parties appear . . .	6,435	11,026	7,218
5. Agreements negotiated by Conciliator and sent to Civil Court .	6,949	8,577	9,874

It will thus be seen that the Conciliators arrived at agreements in about one-fourth of the cases brought before them in the first year; one-eighth in the second year, and one-sixth in the third year. But as the cases brought before Conciliators under head 1 are, to quote Mr. Bhide, often of a "tentative, speculating, or fishing character," not indicating any intention to proceed on failure of conciliation to litigation in the Courts, Dr. Pollen thinks that the true comparison should be between the figures under heads 4 and 5, which show that in *boná fide* cases of dispute, conciliation succeeded in about 44 per cent. in the year 1881, and in about 58 per cent. in 1881-82.

10. Are the rayats benefiting by the system of village registration which requires that every bond for however small a sum should be registered?

Answer.—Mr. Woodward's 17th paragraph on this point appears to contain inconsistent statements. In one place he writes: "Registration of documents for small sums has become more inconvenient and expensive to the borrower. He has to defray the charges of lender and witnesses to attend, perhaps more than once at the Registrar's office which may be several miles away." Then again he says "to avoid the trouble and expense of registration loans for small sums are not usually reduced to writing"; and as a result "it seems probable that expenditure in connection with circle registration will prove greatly in excess of income." And then in another place Mr. Woodward writes: "It does not seem that the rayats experience any very great general inconvenience from the provisions of the law relating to registration. No doubt it is troublesome to many that a mere temporary loan for a petty sum, advanced on the acknowledgment of the borrower in the lender's ledger, must be registered. A man sees a bullock in the bazar which just suits his need or fancy, and straightway goes to the village sawkar to raise the money wherewith to perchase it. Unless he has exceptionally good credit, the sawkar will decline to lend unless the transaction is registered. The Registrar's office is some miles distant; the opportunity slips away. Such cases may very likely occur. But the security against fraud provided by registration more than compensates for such occasional inconveniences, and intelligent rayats fully appreciate and approve of registration in all cases, and are willing to pay the small sums attending it."

I have discussed the subject with several Native gentlemen, and believe the nuisance of registering every petty transaction, especially those known as ledger debts, to be intolerable. The result is that if a customer has credit, written security for the debt is dispensed with, and if he has not credit he goes without his loan. The Registration Law imposes on the poor rayat a difficulty in borrowing additional to that which

arises from the sawkar's inability to make him pay. Most of the transactions registered are between cultivators, and many Registrars have little or nothing to do. Dr. Pollen's remarks are contained in his 58th paragraph and deal only with the registration statistics, which do not afford any important conclusions.

11. Are the sawkars taking steps for securing their claims by privately enforcing sales and mortgages?

Answer.—The evidence of sales or mortgages with possession is to be found in the Registration Returns, but as the compulsory registration of deeds affecting immoveable property under R100 in value commenced with the appointment of Village Registrars under the Relief Act, it is impossible to compare the number of transactions of this class before and after the Act. All that can be done is to note their numbers as the operation of the Act continues. The following figures are taken from Major Portman's Annual Reports:—

	1880-81.	1881-82.
Sales of immoveable property . .	8,031	6,763
Mortgages { With possession . .	31,370	17,920
Mortgages { Without possession . .	13,146	7,609

But Mr. Woodward writes in his 6th paragraph: "From the Inspector General's Report of 1881-82 it appears that more than half the instruments registered relating to immoveable property were between agriculturists. Sales and mortgages of land by cultivators to cultivators were largely in excess of similar transactions between money-lenders and cultivators. In more than half the total transactions sawkars had no hand at all, and the far larger portion of those in which they were concerned related to leases."

It appears to be the general impression that any increased desire on the part of sawkars to obtain possession of land has been more than met by increased determination on the part of rayat to retain it.

Second head of Enquiry.

12. Are there any signs of the sawkars throwing up their trade or leaving the country?

Answer—No. In his 62nd paragraph Mr. Pollen quotes Mr. Ranade, who writes: "No sawkar, small or big, has left his village or closed his business, though a few have learnt to supplement their gains by following other callings." Mr. Woodward writes in his 9th paragraph: "In numerous cases capital has been directed from money-lending into other channels. Much of it has been absorbed in the cotton, grain and piece-goods trade. Many petty sawkars have given up money-lending altogether and have betaken themselves to farming or shop-keeping or both. Rare instances occur where they have left the scene of their former calling. But their departure may easily be ascribed to causes independent

of the working of the Act. I have been unable to authenticate a single case in which the ruin and consequent breaking up of his home by a sawkar could be traced directly and with certainty to the results brought about by the Act." But, as further on explained by Mr. Woodward, no general exodus of sawkars was to have been expected as yet. They have old scores to settle, and much mortgaged land is on their hands. Moreover, as intimated by Mr. Woodward in his 8th paragraph, the sawkars do not believe in the permanency of the present law. They are convinced that they are indispensable to the rayat and that "the relief measures are merely experimental and are doomed to ultimate failure; and that the former order of things, with unimportant modifications, must ere long be restored."

That the operation of the Act must greatly curtail their prosperity was of course inevitable, and this is indicated in the License-tax and General Stamp Returns which were :—

	1879-80.	1880-81.	1881-82.
	R	R	R
License-tax Returns .	3,13,700	1,82,538	1,57,239
General Stamp Returns .	2,63,373	2,32,283	1,79,756

13. Do the Litigation Returns indicate that the sawkars have been scared out of the Civil Court?

Answer.—The total litigation of the four districts gave an average of 36,106 cases in the ten years between 1870 and 1880, or, taking a period of ten years ending with 1875 entirely unaffected by the famine, an average of 43,731 cases. The number of cases since the passing of the Act have been 11,795 in 1880, 16,542 in 1881, and 16,787 in 1882. Some of this diminution may still be traceable to the famine, and besides litigation under other heads must now be taken into consideration. The 6,771 agreements recorded by Conciliators, the 5,569 withdrawals or compromises of cases brought before Conciliators and the 1,929 cases brought before Village Munsifs represent litigation which, in the opinion of Dr. Pollen, if added to the suits brought before the ordinary Courts, would bring the average up to about 15 per cent. below what it was before the Relief Act commenced to operate. As above stated, however, it is impossible to say how far disputes brought before Conciliators would have otherwise been brought before the Courts, and there is reason to believe that the petty shop cases (under R10) in market towns, which form the bulk of the work of the Village Munsifs, would, except for their appointment, have been settled without the help of any Court. It must be said, I think, that, as was to be expected, there has been a considerable though not a startling or undesirable reduction in the amount of litigation in the Courts.

But it must be added that the litigation is no longer all by creditors against debters. There were 2,438 suits by debtors against creditors for the redemption of their mortgaged lands.

14. Does the disposal of the litigation indicate that the sawkars are being unfairly treated?

Answer.—In his 20th paragraph Dr. Pollen shows as follows in regard to the disposal of money suits against (*a*) agriculturists, and (*b*) non-agriculturists. The former class contested 46 per cent. of the claims against them, the latter only 27·24 per cent., and the disposal of the contested proportion in each class of cases was as follows:—

	Cases against agriculturists.	Cases against non-agriculturists.
Plaintiff entirely successful .	33·60 per cent.	59·46 per cent.
Plaintiff partly successful .	54·72 " "	29·69 " "
Defendant wholly successful	11·68 " "	10·85 " "

Again, so far as can be judged from a certain number of test cases, the abatement made in the Courts on the claims of creditors varies from 30·7 per cent. to 34 per cent. on the amount of claim. The provisions of the law in this respect have, in Dr. Pollen's opinion, been worked "very moderately and discreetly. The contract rate of interest has been interfered with only when it seemed manifestly exorbitant; and in many cases even 24 per cent. has been allowed. The reduction of the claims has chiefly arisen from the disallowance of compound interest in the case of renewal bonds." After all that has been said about the sawkars' extortionate system of piling up their claims with compound interest it might have been expected that the Courts would have struck off a far larger proportion than from 30 to 34 per cent. This is only an average, and Dr. Pollen tells me that a far larger proportion has been struck off in some cases.

As regards the rate of interest allowed by the Courts in redemption suits, any agreement to set off profits against interest being necessarily set aside, Dr. Pollen writes in his 23rd paragraph: "At first there was a good deal of divergence of practice and opinion among the Subordinate Judges as to what should be considered a reasonable rate of interest, some allowing 18 per cent., some 15, some 12, some 9 and some even less: but the effect of constant supervision and control by the Special Judge and his Assistants has led to the adoption of a more uniform system, and it has now come to be generally understood that, except where some special reasons exist for raising or lowering the rate, interest at 12 per cent. should be allowed in the case of mortgage transactions where the mortgagee has been for a number of years in undisturbed possession."

15. Are the sawkars able to execute their decrees when their claims have been cut down to what is fairly due?

Answer.—This is a most important question. As remarked by the Honourable Mr. Hope in his speech, "we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we give the creditor full and effective aid in obtaining all that is fairly due and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable."

The information of this point is inconclusive. Mr. Bhide writes, *vide* Dr. Pollen's paragraph 64: "So far as the trial of suits is concerned the sawkars do not complain much. Reduction of their claims made in the Civil Courts by going into the past history of every transaction, by awarding only a reasonable rate of interest, setting aside the agreements of parties, by refusal to grant compound interest, etc., they submit to without a great deal of murmur; but what they most complain of is the deprivation of the power of enforcing their decrees by imprisonment of the agriculturist debtor and the attachment of his immoveable property."

In this connection attention should be paid to the 10th paragraph of Mr. Woodward's report. The law and the practice of the Courts, he writes, debar the decree-holder from realising the sums awarded to him, even though made payable by instalments. In either case "it is hard to see from what source the debt is to be recovered. The land, cattle, house, implements of husbandry, and practically the produce of the debtor's field are exempt from attachment and sale." As regards the exemption of produce he explains: "Practically the crop is protected against the creditor, because it is classed with immoveable property while standing, and out of it, when cut, the Government assessment has to be satisfied before the creditor can touch it. 'Grain haks' to village servants are also a somewhat heavy charge on the crop. * * With respect to any surplus remaining after these deductions, the provisions of the law, by discouraging '*ex-parte*' decisions, render publicity of proceedings against agriculturists obligatory, and the debtor has, if so disposed, abundant opportunity to dispose of such surplus before the formalities preceding the execution of the decree have been complied with." This last remark refers to section 7 of the Act which requires Courts to summon the defendant as a witness and enables the defendant by avoiding the summons to postpone the disposal of the case.

Turning next to Appendix C to Dr. Pollen's report, which gives the statistics of proceedings in

execution of decrees under the Rayats' Relief Act it is found that in 1882—

3,535 decrees were presented for execution against agriculturists,
——of which
only 98 were disposed of by attachment or sale of moveable property,
19 by attachment or sale of property specifically mortgaged,
506 by private adjustment certified to the Court,
8 by transfer to the Collector under section 22,
2,216 were otherwise disposed of, and
688 remained undisposed of at the close of the year.
———
3,535
———

Thus the bulk of the decrees presented, 2,216, were disposed of in some way other than sale of property or private adjustment certified to the Court. I have asked Dr. Pollen to explain what other ways are alluded to besides specific performances and delivery of mortgaged property, and he has answered that applications for execution fall temporarily to the ground,—

1. Because decree-holders neglect to point out debtors' property for attachment,
2. Because no property of the debtor can be found,
3. Because the debtor's house is found locked up,
4. Because decree-holder tells the bailiff that he does not wish to proceed further,
5. Because decree-holder fails to pay the process-fee,
6. Because defendant cannot be found,
7. Because the debtor pays a portion of the debt and makes some arrangement for the rest (but this ought to be certified to the Court),
8. Because the debtor applies to the Court for an order to pay by instalments.

Future reports, Dr. Pollen states, will show the execution in greater detail.

At first sight the Execution Returns suggest that the complaint of the inability of decree-holders to execute their decrees is just. But the Returns show as much in regard to the execution of decrees against non-agriculturists, and in fact the Judicial Statistics of the Presidency generally show that in the majority of cases, whether against agriculturists or non-agriculturists, and whether in the Deccan or elsewhere, it is not the custom for decrees to be actually executed. They are most commonly used by creditors to hold *in terrorem* over debtors, who then settle with the creditors in the best way they can. These private adjustments

are discouraged by the law and, unless formally certified, are not recognised by the Courts. They are nevertheless in accordance with the customs of the people.

The answer then to the question now under consideration appears to be that, having regard to the custom of private settlement under mere threat of execution of a decree, it is impossible to say how far the creditors' decrees have been satisfied, but the creditors complain, and it is obvious that their inability to threaten their debtors with imprisonment or sale of their lands must have greatly curtailed the power of the threats.

16. Are the sawkars' rights confiscated by the Insolvency provisions?

Answer.—No, for the reasons explained in answer to question 6; but Dr. Pollen writes in his 33rd paragraph: "There can be no doubt that if any considerable proportion of the rayats were to take full advantage of the law, most of the money-lenders would be completely ruined."

17. Are the rayats encouraged in the dishonest repudiation of debts?

Answer.—From Dr. Pollen's 15th paragraph it appears that they are inclined to make a dishonest use of the provision of the Act, section 7, which requires Courts to insist, if possible, on the presence of the defendant before giving a decree against him. Dr. Pollen writes: "There is a growing tendency on the part of defendants to abstain from attending when first summoned, because they know that their presence is necessary and they wish to delay and defeat their creditors as long as possible." Greater severity in compulsion of the defendants' appearance has been enjoined by Dr. Pollen on the Courts.

In his 20th paragraph he writes: "The number of false or dishonest defences exceeds the number of false or dishonest claims. The defendants are too prone to deny the receipt or consideration really received and to set up false pleas of payment and to endeavour to maintain the same by perjured testimony. The Subordinate Judges report that there is a growing tendency on the part of agriculturist defendants in money suits to abuse the indulgence granted to them by the law and to evade by dishonest defences the payment of their just obligations."

In regard to the claims to redeem mortgaged lands Dr. Pollen writes in his 22nd paragraph: "There are many cases in which the plaintiffs put forward unfounded allegations of mortgage, having no particle of right to sue for redemption, *e.g.*, where their once existing right has been purchased by strangers at Court sales, or where they have years ago sold their lands out and out, or where they have thrown up their lands and other persons have taken up the occupancy from Government. The Courts have, therefore, to be very careful, in trying redemption suits, to

guard against false claims as well as false defences."

Third head of Enquiry.

18. To what extent has the rayats' credit been affected?

Answer.—Solvent rayats can still borrow as before. And as regards the poorest class Dr. Pollen is of opinion (*vide* his 65th paragraph) that when the operation of the Act commenced they had no credit "in the true sense of the word" to lose. "Though nominally perhaps owners of their land, they have actually been the rack-rented tenants, or even the predial serfs, of the village money-lender to whom in reality belonged the fruits of their toil." But so long as they can earn money by labour they must have some credit. This is suggested by their invincible repugnance to be declared insolvent. As Mr. Ranade writes (*vide* quotation in Dr. Pollen's 63rd paragraph), "the fact that they fear a loss of credit shows that they have credit to lose, and this is evidence of a much more hopeful state of things than is usually allowed."

But there is a consensus of opinion as to the credit of poor rayats having been too much curtailed. The general impression derived from discussing the point with Native gentlemen is that sawkars are very ready to trust the rayat's word if he has obviously the means for making it good; but now that they are no longer able to compel payment, they will not trust those whose power of paying depends on special efforts.

19. Can the general body of rayats get on without borrowing?

Answer.—It is the universal opinion that they cannot. The last three years are no test because the rayats have had good seasons, and have been able to take their crops home, without being obliged to give up more than they thought proper in payment of old debts. In his 23rd paragraph Mr. Woodward writes: "Nine-tenths of the rural population are so circumstanced that they must have advances from time to time."

It is the opinion of both Mr. Woodward and Dr. Pollen that Government must be prepared to some extent to take the sawkars' place whether in the way of easier Tagai advances, or of modifications in the mode of collecting the assessment and perhaps, Mr. Woodward intimates (paragraph 14) reduction of assessment as enhanced on revision. "Almost any sacrifice," Dr. Pollen writes in his 65th paragraph, "would be preferable to forcing the rayat back into the toils of the sawkar from which he is just now learning to emancipate himself. Once freed from debt, I expect he will be able to get on without borrowing in ordinary years, but in periods of scarcity or distress he will have to look to Government for a helping hand, unless in the meantime the relations of the lending and borrowing classes shall have adjusted themselves on a more rational and satisfactory basis than that on which they rested in time past." The liability of Govern-

ment under the present system is pronounced by Mr. Woodward in stronger terms. "The rayats," he writes in his 23rd paragraph, "while grateful for their release from the clutches of the sawkar, naturally look to Government to replace him when the evil day shall arrive." And in his 13th paragraph: "What they want is—prompt advances and on the spot. I have briefly touched on this subject (Tagai), because it seems inevitable that in the future loans from Government must replace, to some extent, those formerly supplied by the sawkar. It may even be worth considering, in the event of insuperable difficulties being encountered in starting Agricultural Banks, whether Government might not liquidate the ascertained liabilities of the Deccan rayats and recover the numerous sums advanced as Tagai."

20. Are there any signs of difficulty on the part of the rayats to continue their cultivation in consequence of inability to borrow, as for instance throwing up their holdings or selling their cattle?—or having their land sold for payment of assessment?

Answer.—As regards throwing up holdings, no such effect is observable, though for want of loans some cultivators have left their holdings uncultivated.

In his 4th paragraph Mr. Woodward writes that "the area of land under cultivation has greatly increased year after year since the introduction of the Act," but he adds that a large number of acres in the holdings of most villages in the poorer portions of the four districts remains unsown, partly for grazing and fallow purposes, but much "owing to the difficulty of getting bullocks to cultivate it." Again, in paragraph 4 Mr. Woodward alludes to the amount of untilled land, in excess of what would naturally be kept for fallow or grazing, which the rayats continue to hold and pay rent for. "In most cases," he writes, "I discovered on enquiry that the land had been untilled since the famine. The owners explained that they retained it hoping that a bumper crop would at last give them the means of bringing their fallow under cultivation. Their last thought was to resign it. If they did, they would probably be unable to get it again when they wanted it."

In his 2nd paragraph Mr. Woodward refers to the Taluka of Kopargaon in the Ahmednagar District where, as an exception to the usual prosperity, the crops have wholly or partially failed, and he writes: "There the rayats have no special form of industry to turn to, unconnected with agriculture. Accordingly the need of the sawkar is greatly felt. Notwithstanding remissions and suspensions of revenue, in spite of liberal grants of Tagai by Government, whole villages are deserted, the inhabitants having gone to work where they can get it. Most of the cattle have been sold off one by one for the support of the owners, and much of the land is uncultivated. But for the Act, the sufferers would doubtless have got petty advances from the sawkar." But Mr. Woodward then proceeds to argue that it is far

preferable for the rayats to leave their lands in unfavourable years and work elsewhere rather than be enabled to continue on their lands through loans which make them the bond-slaves of their creditors. "Labour," he writes, "is well paid and living is cheap. A labourer earns four annas and his wife two annas a day. They can both subsist on the wages of the woman. They still retain their land and hope for the future. After the first rainfall they intend to return and lay out their small savings in a fresh attempt at cultivation. One good season will render them comparatively comfortable, and several such will restore them to their former social status."

As regards the sale of cattle through inability to obtain loans, Mr. Woodward writes in his 5th paragraph: "In two of the talukas of Nagar where much harm was caused by the locusts last year (good later crops, however, made up for this) I made special enquiries at the large cattle-marts held weekly in the neighbourhood with the object of ascertaining whether the people had been forced to part with their cattle to meet the Government demands. I found that no unusual number of sales had taken place at about the time when the instalments fell due, and that the ordinary selling price of the animals remained unaffected." But in the same paragraph Mr. Woodward says "no doubt bullocks and other property necessary for the tillage of the land have often been sold to satisfy urgent demands of subordinate officials whose competency is gauged by the sums collected without recourse to legal forms of compulsion." The answer to the question is therefore not entirely satisfactory.

As regards land having to be sold up for payment of assessment, in consequence of inability to borrow, Mr. Woodward writes in his 5th paragraph: "The area of land taken up for cultivation has steadily increased year by year in all the four districts, even in the northern talukas of Nagar, where partial scarcity has prevailed for several seasons in succession. No abnormal pressure has been needed for the collection of the land revenue, though the burden of enhanced assessments furnishes the principal subject of complaint to the cultivators."

Mr. Ranade writes, *vide* Dr. Pollen's paragraph 62, that all the Subordinate Judges "agree in stating that no land has been thrown out of cultivation and there have been no sales of land, except in two or three talukas, for Revenue arrears."

21. Are the cultivators induced to apply oftener for Tagai advances from Government now that their power of obtaining loans from sawkars has been curtailed?

Answer.—Apparently not; but in answer to this question I append a statement obtained from the Accountant General.

Statement showing how much Takavi has been advanced to the Rayats in the undermentioned districts during the three years before and in each year since the Deccan Agriculturists' Relief Act, 1879, came into force, viz., *from 1st November 1879.* No.

Name of District.	Before the Act.			Since the Act.			
	From 1st November 1876 to 31st October 1877.	From 1st November 1877 to 31st October 1878.	From 1st November 1878 to 31st October 1879.	From 1st November 1879 to 31st October 1880.	From 1st November 1880 to 31st October 1881.	From 1st November 1881 to 31st October 1882.	From 1st November 1882 to 30th June 1883, eight months.
	R a. p.	R a. p.	R a. p.	R a. p.	R a. p.	R a. p.	R a. p.
Ahmednagar	35,704 0 0	6,885 0 0	10,328 0 0	7,427 9 11	1,719 6 0	26,911 5 10	4,673 0 0
Poona	80,213 0 0	605 0 0	75 0 0	555 0 0	......	161 15 8	61 0 0
Sholapur	1,18,977 0 0	12,672 0 0	3,122 0 0	3,675 0 0	548 0 0	1,410 8 10	195 0 0
Satara	34,132 0 0	372 0 0	8,656 0 0	12,311 0 0	2,124 6 0	3,234 7 5	1,575 0 0
Total	2,69,026 0 0	20,534 0 0	22,181 0 0	23,968 9 11	4,391 12 0	31,7 18 5	6,504 0 0

Note by the Under Secretary. No.

The Chief Secretary having kindly sent me a copy of his note of August 1883 on the working of the Deccan Agriculturists' Relief Act and having asked me for any observations which occur to me on the subject, I append a few remarks on an aspect of the question which has not, I think, attracted the attention it deserves. This is the gradual improvement in the condition of the rayats of the four Relief Act Districts which must have resulted and which must be resulting from the steady progress which has been maintained during the past six years in the prosecution of Irrigation works and, I may add, Railways. The condition of the Deccan peasant is, I think, too readily assumed to be that depicted in the port *by the Commission on the rayats in the Deccan* (1875). The description was accurate then, but is becoming applicable to a smaller number of rayats year by year.

2. Many even of those who are in favour of the Act look forward with apprehension to the first year of scarcity when they fear that the vast majority of the rayats will be forced to appeal for aid to the sawkar who, if he helps them at all, will do so only on the most stringent terms. It is pointed out that only a small percentage of the peasantry is well-to-do, and it is inferred that the rest, when the hour of trial comes, will be forced either to appeal to the sawkar in vain or to sell outright their lands to him.

3. I myself think that the Act would have failed had it had to stand the test of a bad season when it first came into operation; and I also think that it could never have done very much good had its introduction not happened to have coincided with the prosecution of the large Irrigation schemes above referred to. In their absence it might have kept the well-to-do rayats on their legs and have enabled a certain number of rayats who were formerly well-to-do and who had mortgaged their good lands to redeem them. But the total number of well-to do rayats thus maintained in existence would be small, and, in the absence of schemes to counteract the effects of a scanty and uncertain rainfall, it could never be large. The vast majority of the rayats would, therefore, in an unfavourable season, have been thrown upon the sawkars for assistance, and, whether the assistance was given or withheld, the evil results might easily be such as fully to balance the good results of the Act.

4. But, for reasons which are tolerably obvious, it happens that the portions of the four districts whose condition most loudly called for the passing of the Relief Act are also the portions most liable to famine, and are consequently the areas within which Government has prosecuted, is prosecuting, and will prosecute large Irrigation works.

Each of these works implies that a certain number of rayats are rendered well-to-do, as they no longer depend upon precarious rainfall of the neighbourhood, but are certain of their crop which, if the irrigation be perennial, may be sugarcane. This certainty, besides its material effect, is likely to have a moral effect in rendering the rayat more provident, as he will no longer feel that his best laid plans may fail from a deficient rainfall.

It appears to me, therefore, that the class of well-to-do rayats in these districts is one which must annually increase, and that the creation of a large class of substantial farmers in the Deccan is not a chimera. If, for instance, at the present moment 20 per cent. of the rayats are able to do without the sawkar and 80 per cent. are (in a bad season) unable, the figures next year may be 22 per cent. and 78 per cent., and in the following year they may be 25 and 75.

5. As an illustration of my meaning I will take the two talukas of Bhimthadi and Indapur in the Poona District. These two talukas are frequently quoted as typical areas whether the Relief Act or Famine Policy is under discussion. Their rainfall is very scanty and precarious, and the people were very deeply in debt.

I had charge of these talukas for three consecutive years (including the year of the Supa rayats and the commencement of the last famine) and handed over charge of them in November 1876. At that time there was no Government irrigation whatever (except from one small tank which irrigated about 30 acres).

Now the Khadakvasla Canal and its branches irrigate a very large acreage on one side of Bhimthadi, and in another year or two the Nira Canal will irrigate the whole length of the other side of Bhimthadi and the whole of one side and a portion of the centre of Indapur. Three large tanks and several smaller ones have also been constructed, and the Dhond-Manmad Railway, commenced in 1877, has its terminus at Dhond in the Bhimthadi Taluka, which implies a certain opportunity of earning wages for the inhabitants of the neighbouring villages. I imagine, therefore, that the condition of the people of these two talukas has very greatly improved since I was in charge of them; for, besides the benefits resulting from the works themselves, a great deal of money must have found its way into the talukas in the shape of wages and compensation for land taken up for the works. The Nira Canal will have peculiarly beneficial results, as it passes through very rich soil in a part of the district where the rainfall is particularly scanty and unreliable.

I think, therefore, that every year must add considerably in these talukas to the number of rayats able, even in years of scarcity, to do without the sawkar. If, however, these rayats are not protected by the Relief Act (at all events until they get well on their legs), the sawkar is tolerably certain to get hold of their lands which he will now covet on account of their having become valuable through irrigation.

To these well-to-do rayats, whom I may call newly-made, will each year be added a certain number of men formerly well off and who are now redeeming their lands from the sawkars. I imagine that these redemption suits always or nearly always mean that good land (with wells or some such advantages) is redeemed, because I feel sure that the sawkars would not have been troubled with the possession of indifferent land.

When the Nira Canal is completed there is another large project, a tank, to be taken up, and my belief is that in another five years there will be a decidedly numerous and increasing class of well-to-do rayats in the Bhimthadi and Indapur Talukas, always provided that they are in the interval protected by the Act. I think, too, that the class of well-to-do rayats recalled into existence by the Act or created by the joint operation of the Act and the extension of irrigation will (having regard to the increase in irrigation) be able to withstand the effects of even two or three successive bad seasons. Most of the rayats in these two talukas who had been well-to-do, but had mortgaged their good lands and had to work like slaves on their bad lands, dated their misfortunes from the close of the American Civil War. They had, during the continuance of the war, obtained very high prices for their produce, and had been enabled to borrow money with great ease; this they could have repaid had prices been maintained, but they collapsed very suddenly, and the rayat had to sell or (what was then practically the same thing) to mortgage with possession his best land to the sawkar. It was this accident and not a succession of bad seasons which ruined the class in question. They could have stood the bad seasons, because they had wells and also stores of grain, and what they lost by the failure of crops on their unirrigated lands they gained by the enhanced value of their store of grain and of the produce of their irrigated lands.

6. I have little doubt that what I have said regarding Bhimthadi and Indapur is equally true of most of the other talukas in the worst parts of the four Relief Act Districts. In Satara, at all events, the Irrigation Department has, I know, been very active. If, therefore, it be the case that the number of rayats who can dispense with the sawkar's aid is annually increasing, the arguments that a larger proportion of the rayats will in bad seasons miss the aid of the sawkar is one which annually loses some of its force. I may observe, too, that the owner's irrigating land is not alone benefited as he employs a proportion of his less fortunate neighbours in weeding, collecting manure, and similar ways.

7. I myself should greatly regret to see some or any of its more important provisions repealed, because I think it will do a very great deal for the Deccan peasantry if it is kept in force long enough. Even in a year of absolute famine I do not think that the

Act would prove very harmful, as the sawkars would have made their usual advances in seed and money before they knew a famine was coming, and I do not think they did much in the way of supporting their *poor* clients during and after the last famine. Their most useful function then was turning themselves into or increasing their transactions as grain dealers. The famine policy of Government is also much more settled than it was in 1876, and relief works would be opened more rapidly and on less provocation than during the famine of 1876-77.

No doubt at the close of a famine Government would be compelled to make liberal Tagai advances.

8. Some of the provisions of the Act might, however, I think, disappear with advantage *e.g.*, the more vexatious Registration rules and, perhaps, the Conciliation system. But any alterations in view to facilitating the execution of decrees ought, I think, to be made with very great caution. The sawkar had matters pretty well his own way for a long time, and it is perhaps equitable that the rayat should now have his innings; when he is once fairly on his legs the measures which protect him might perhaps be considerably modified, but I have always thought that aiming at free trade in land and the preservation of an ignorant peasantry in a prosperous condition are two incompatible objects, and that some departure must be made both from the laws of Political Economy and from the maxims regarding freedom of contract, etc., which prevail in our Courts if an ignorant peasantry, already deeply involved, is to be raised to a state of comparative affluence and maintained in it.

C. G. W. MACPHERSON.

From the Hon'ble T. C. HOPE, Bombay Civil Service, to the Chief Secretary to the Government of Bombay, No Judicial Department,—dated Simla, the 6th September 1883.

Dr. Pollen's Annual Report for 1882, No. 203, dated 31st March 1883, on the Deccan Agriculturists' Relief Act.
Mr. Woodward's Special Report, No. 30, dated 25th June 1883.
Mr. Justice West's "Observations" on Mr. Woodward's Report, dated 27th July 1883.
Mr. Ranade's reply to Mr. Justice West, 2nd August 1883, with opinions by the Judges of Satara and Ahmednagar.
Note on the working of the Deccan Agriculturists' Relief Act, 1879, by Mr. Gonne, with Appendix.

I have had the honour to receive the documents specified in the margin, together with your letters Nos. 4642 and 5685, dated the 9th July and 8th August, inviting my remarks thereon, and beg to express my thanks for the courtesy shown in the reference.

2. In paragraph 12 of my note of 15th July 1882, I recommended various measures for the purpose of affording the Act a more complete and fair trial than it had so far received, and the appointment of a Special Officer to give effect to some of them, as also to collect materials useful for a reply to the Secretary of State's Despatch No. 2 of 26th January 1882. These measures have for the most part not been adopted, but a special officer has submitted a report on the working of the Act. What I contemplated was prompt executive action and the collection of facts. What is now forthcoming is a certain amount of notice of the suggested measures by the Special Judge, together with impressions on the working of the Act gained by an officer who has made a tour through the four districts during the past cold season. I have no desire to question the action in this respect which the Bombay Government have thought proper, and I do not feel called upon to enter into any controversy with the Special Judge or the Special Officer regarding points upon which my opinions may be different from theirs. I think I shall best contribute to the subject in its present stage by confining myself, as far as possible, to brief suggestions for practical action.

3. *Arrears.*—I regret to observe that the arrears are still increasing. The recommendation in paragraph 4 of my note of 15th July, that the number of Sub-Judges should be restored to that contemplated at the passing of the Act, has only been partially complied with after the lapse of several months. The mischievous effects

On June 1st, 1880	1,102
" " 1881	2,071
" " 1882	3,658
" " 1883	4,166

of short-handedness in delaying disposals are shown in Dr. Pollen's 26th paragraph, but they obviously are not confined to this alone. I would very earnestly repeat the recommendation that efficient steps should be taken without delay to work off arrears, and stop their further accrual.

4. *Duration of suits.*—This is partly due to the laxity in enforcing the attendance of defendants and the production of evidence, to which Dr. Pollen alludes in his 15th and 18th

* Printed on pages 320 to 332.

paragraphs. I trust that the Sub-Judges will not flinch from the judicious remedy he contemplates, which is in the real interest of all parties.

But the increase of duration from 3 months and 9 days to 4 months and 22 days, reported in his 26th paragraph, is serious, and cannot, I think, be wholly ascribed to the short-handedness, the lax attendance, and the increased difficulty of the work, though the last may be freely admitted. The technicalities which I believe to be "still rampant," as I find no notice of any mitigation of them, are not such as arise from the disposition of the Judges which I am sure is excellent, but from the routine and procedure of the Courts. The requiring personal attendance of a plaintiff "six times in the progress of a suit," in order "only to perform some purely formal or ministerial duty" (see Dr. Pollen's No. 386 of June 7th, 1880, paragraph 61), and other harassing practices, indicate where reform is needed, as explained in paragraph 12 of my note of 15th July 1882.

5. *Statistical information.*—This is shown by Dr. Pollen's paragraphs 22, 24, 28 and 29 to be still very incomplete, especially on points such as the execution of decrees in money and redemption suits, and the payment of instalments, which are essential to an accurate judgment of the effects of the Act. I do not see why he cannot call for any returns he thinks useful without waiting for the initiative of Government or the High Court.

Batta to witnesses is now the chief item in the costs of original suits. I have not the means of judging whether the allegations on this subject in Mr. Woodward's 21st paragraph are correct. There is, of course, much truth in Dr. Pollen's remarks that the thorough sifting of claims necessarily enhances costs, and that the small suits raise the percentage.

6. *Village Munsifs.*—These seem to have done good work again, and I trust that the extension of the system may ere long get further than the reports by two out of four Collectors, and the enquiries which were, when Dr. Pollen wrote, the sole result of the recommendations of last year. If the system is useful in itself, as shown in paragraph 9 of my note of June 15th, 1882, the fact that it principally benefits non-agriculturists is no reason for discountenancing it.

7. *Conciliation.*—The progress of this system, and the growing opinion of Dr. Pollen himself in its favour, supported by the unanimous approval of it by his Assistants and Sub-Judges, are most satisfactory. In the only cases in which the system really came into play successful mediation resulted in 58 per cent. of instances. The sole obstacle to its efficient working is the unfortunate absence of power in the conciliator to get the parties before him—a power which is of the essence of the system. The refusal of the Legislature in January last to grant this power was due partly to the want of sufficiently emphatic support of it by Dr. Pollen and the Bombay Government, and partly to a misapprehension, as to the nature of the proposal, in the minds of the Native Members of Council, by which those warm advocates of Local Self-Government and self-taxation were found denying this petty power to the very classes of their countrymen from whom Local Boards are drawn. I am opposed to any further miscellaneous tinkering of the Act, and can only suggest full resort to the expedients suggested in Dr. Pollen's 54th paragraph, until a favourable opportunity for conferring this power may occur.

I would repeat the suggestion that the number of conciliators should be increased more freely than may be anticipated from Dr. Pollen's 38th and 39th paragraphs.

8. *Revision.*—The increase in cases taken up is satisfactorily accounted for, especially by "the growing knowledge of the people as to the grater cheapness and efficacy of the system of revision, as compared with that of appeal." Caution is, no doubt, exercised in taking up cases which do not show clear *primâ facie* need for investigation. As the law, and its recent improvements, become better understood by the Courts, the necessity for revision will, it is to be hoped, diminish. And when, some four or five years hence, the whole system has worked itself into a normal state, and the Special Judge can be dispensed with, the District Judges with the aid of Special Assistants, such as those Dr. Pollen now has, should have no difficulty in doing such amount of work as revision will entail.

9. *General working of the Act.*—On this subject it appears to me that the only sound basis for an opinion consists in statistics, as far as they can be obtained, and in the opinion of the experts, that is to say, of the body of some forty able and experienced officers, with Dr. Pollen at their head, before whom the practical action and effects of the Act are daily passing in review. Their verdict, expressed in Dr. Pollen's 63rd, 64th and 65th paragraphs, will not bear condensation, but may be described as entirely favourable to the measure as a whole. Certain portions of the Act Dr. Pollen considers such an "unqualified success" that he

Printed on pages 193 to 219.

would extend them to all other districts in the Presidency Mr. Ranade's paper of the 2nd ultimo is an effective answer to critics, some of whom hastened to announce the failure of the Act before parts of it had even come into operation.

10. The portions of the Act to which exception is chiefly taken are those relating to registration, receipts and accounts, Collector's management and insolvency. The first is said to be harassing, the other three inoperative. I need not discuss whether these provisions might have proved more satisfactory if they had made a different start.

11. Registration, on which the Deccan Rayats Commission set much store, is just undergoing a change of system, of the results of which I am not at all sanguine.

12. The receipt, pass-book and account provisions are little known or used at present, but perfectly harmless and beneficial in their application. Attention should certainly be concentrated, as Dr. Pollen recommends, upon the enforcement of the giving of receipts, which has been compulsory in the case of land revenue since the commencement of British rule.

13. Collector's management and insolvency are, as a matter of fact, not resorted to. As to the reasons for this, various theories appear in the present papers, to which I shall add no more.

To management by the Collector I certainly looked as a means of recovering for the creditor his just claims, and as a compensation for having his bonds and accounts questioned, and his power of enslaving and imprisoning taken away. From the inoperativeness of this provision it is assumed that the money-lender remains without compensation, that he is the victim of injustice, and that the Act, its balance destroyed, must be revised in principle. But, while I regret that effect has not been given to these provisions of the Act, still, looking at the effect of the Act as a whole, any such assumption is gratuitous, contrary to evidence, and unsound. The whole of the reports go to show that although the money-lender does not get his compensation in this way, he is getting it in other ways which were unanticipated or not expected to be so weighty. The proportion in which his claims are cut down is so moderate as to be held by his friends to be proof of the righteousness of his dealings. One main objection made to Conciliators and *Kulkarni* Registrars has been that they were too favourable to his rapacity. The Conciliators' notice and certificate are thought to be weapons of extortion with which he is supplied The chief cause assigned for non-resort to insolvency is the honest desire of the rayat to pay his debts. It must be remembered that these objections and allegations are two-edged. Where the rayat loses, the money-lender gains. And Dr. Pollen makes it clear that while, on the one hand, the money-lender's claims are justly, and even liberally, dealt with, he has obtained, through conciliation, instalments, prompter hearing, the general simplification of justice and the promotion of amicable settlements, a very considerable and growing set-off against whatever, which was legally his, he may be supposed to have lost.

14. The condition of the rayats would seem to be gradually becoming what the Act was intended to promote. If they are generally more thrifty, more self-reliant, more independent, so much the better ; if those possessed of a slender basis for credit do not obtain it without limit, or if those who formerly could not do without borrowing in ordinary years are now obliged to resort to loans in extraordinary, we need not be surprised or distressed. If, again, they show a growing ability to defend themselves in suits, and a disposition to set up dishonest defences, we may congratulate them on the former, and leave the Courts to deal with the latter, as with similar tendencies in money-lenders. The Act cannot, as Mr. Ranade says, be expected "to regulate the seasons or fertilise the land," to make foolish people wise, and to give every man in the four districts a cheque-book in his pocket and a balance at his bankers.

15. As regards the money-lenders again, there is no evidence whatever either that they have ceased lending, or intend to do so. But if loan operations are contracted, if capital is diverted to other objects, if the middle and inferior money-lenders, whom the Deccan Rayats Commission considered to be the most mischievous, are driven out of the field, this is just what was intended, and is a subject of congratulation. The phenomena which are now observed in the Deccan, and which appear to cause surprise and anxiety to some people, are natural to the transition state into which the new law, only just beginning to operate fully, has thrown society.

16. What society, thus fermenting, appears chiefly to require is to be left alone. By natural and healthy action, the rich and the poor, the strong and the weak, the thrifty and the improvident, which are its essential elements, will gradually settle into their proper social and economic relations, under a law which has taken away former powers of preying upon each other.

17. *Further relief measures.*—From the preceding remarks it will have been inferred that I do not see any particular necessity for further measures of relief. I believe with Dr Pollen, that, if present conditions are unchanged, and the severe strain of scarcity or famine do not supervene, a few more years will see the rayats fairly free from debt and able to take care of themselves. The money-lenders will then be a more cautious class, but no rayats reasonably entitled to borrow will be unable to do so.

In any case, however, there are no data at present to warrant further alteration of the Act. It only came into force in its expanded form on 1st February last, but Dr. Pollen's last report relates en irely, and Mr. Woodward's almost entirely, to an anterior period. Until time sufficient for observation of its true working has elapsed, and facts bearing on the latter have been accumulated, no fresh opinion of value can be formed, and no complete or reliable reply can be afforded to the Secretary of State's Despatch No. 2 of 26th January 1882.

18. Two measures of relief outside the scope of the Act, however, are suggested in these papers. Regarding the subject of Agricultural Banks, I prefer to reserve my final opinion until it comes before the Legislature, merely remarking that the objections to recovery by the State and to competition with private bankers are serious, and that the practical working is likely to be far more difficult than seems to be expected. The idea of advances by Government to individuals on the joint security of all the assessment payers of the village, however, I may at once say that I believe to be totally unworkable, in a rayatvari country at any rate. There is no common bond of interest strong enough to induce the well-to-do to bear losses caused by the poor, and the enforcement of joint responsibility would be even more difficult than it has been found to be in the case of robberies traced to a village. The proposal to recognise, as a mode of security for loans, contracts for personal labour or slavery, for a term of years, would not, I believe, be entertained by any Legislature.

19. *In conclusion,* I am in entire accord with Dr. Pollen and Mr. Woodward as to the desirability of extending the operation of the Act. Certain portions of it are well suited, not only to the whole Bombay Presidency, but to all India. But the condition of Khandesh, Nasik, and Kaladgi urgently calls for relief, and I should be glad to learn that the Secretary of State had sanctioned the passing of a brief Act, authorizing the Local Government to apply to those districts all, or such portions of, the Deccan Agriculturists' Relief Act as it thought fit.

Observations by Mr. Justice West, on a "Note on the working of the Deccan Agriculturists' Relief Act, 1879," by Mr. C. Gonne. No

I have read Mr. Gonne's note on the working of the Deccan Agriculturists' Act with a great deal of interest. In its careful and skilful statement of historical facts it furnishes the safest basis for criticism and, if need be, for reconstruction. I do not propose to follow the note along this path which leads to conclusions identical in the main with those which at some personal cost I had previously indicated. The suggestions of improvements deal partly with the authentication of transactions, partly with the investigation of suits, and lastly with the money-lending system of the Deccan. On the first two points I agree to a considerable extent with the Chief Secretary. On the last I think he propounds an attractive scheme, but on investigation must be pronounced unsound and dangerous. It gives a practical form to a set of associations and ideas with which it is impossible not to feel a great deal of sympathy. These sentiments (as they must be called rather than principles) are very widely diffused making many men uneasy with a feeling that our economical system is radically faulty, that some things might be done and ought to be done by the State to raise the more helpless classes in the scale of comfort and independence. The men who think or feel thus seldom or never, so far as I know, back up their complaints or their demands by a thorough examination of the subject from a purely scientific point of view; yet as any step in a policy affecting the daily transactions of the people may be of momentous consequence, it is desirable that every impulse and every suggestion should be referred to established principles and carefully followed out to its calculable consequences before it is accepted into the scheme of Government. Economical interests are intertwined with the whole structure of society. Some financial arrangements which in themselves might be feasible and desirable must be definitely put aside because they imply tyrannical restraint. Others may be incompatible with the general system of administration, and others again entirely opposed to the character and habits of the people. But besides all these there are propositions which at the first view, like nearly all economical errors, seem almost self-evident, and yet on a full investigation turn out demonstrably false as their

less obvious logical connexions bring them into conflict with known axioms. I have learned to think many desirable things impossible, or possible only through natural growth. I believe the attempt to regulate people's private transactions is nearly always mischievous, that benevolence is likely to be injurious unless controlled by wisdom and coolness, and that it is practically impossible for a Government to take a quite true measure of the social conditions of progress and prosperity. It must consent to a division of labour between itself and nature. It must look to its own central principles and moving forces. Any scheme of reform which runs counter to these is likely to fail, and especially in India, where the quick succession of ruling men prevents a long and complete trial of any one's peculiar ideas. What persists is the intuitive reference of every theory and plan of working to the standards and political method accepted in England. The wisest and ablest individual administrator cannot guard, if he would, against this tendency. The national tradition and character quickly replace the constructions of his genius when once he is out of the way. If he rests upon the past his plans are called superannuated, if on his personal experience he is thought crotchetty. It will not do therefore to be out of harmony with the general tendencies of English political thought: an enduring vitality can be secured for any plan only by conformity to it; for as it pervades the general system of Government, the isolated institution based on different principles must from time to time come into collision with the others and perish in the shock. Now, the marked characteristic of the English polity is an almost unfettered individualism. This, I think, is in radical conflict with joint responsibilities and the control of the one in his private concerns by the many; and as we consciously or unconsciously strive to mould Indian collective life on the same type, it seems to me in the highest degree unlikely that any scheme of amelioration which sinks the individual in the petty Corporation can have a chance of long existence under an English Government. Its good points will give trouble if only in the effort to understand them; its bad points will seem foolish and intolerable. We must needs work for the future upon lines which will assimilate our system more and more to that of our own country, allowing for local and national peculiarities, but not making them in any sphere the ultimate basis of our polity. The proposed financial scheme seems to me erroneous in principle from this point of view. It seeks a basis in what has perished; it implies a communal constitution that would not and could not endure I will try to show this by tracing out the probable effects of Mr. Gonne's plan in several directions with the simple desire to reach true conclusions which may entitle me to rank as a fellow-labourer with the accomplished author whose suggestions I venture to criticize. But first I will offer some remarks on the proposals made as to civil procedure and registration.

In paragraph 19 (4), "it is proposed that all the Subordinate Judges shall be vested with the function" of Conciliators. In paragraph 2, page 21, the opinion is expressed: "I do not think that the Subordinate Judges should be, as at present, themselves Conciliators." Of these two proposals the former is the better, but both are defective. It is true that "no good is gained by trying to make people agree where they do not want to agree," but it is only a half truth. Parties may be at variance through causes lying quite outside the merits of the particular suit in which they come into collision. In such a case conciliation is impossible, unless these causes are reached and removed. But in many cases, as the common use of the word "misunderstanding" shows, contentions arise from an incapacity to see the matter in dispute from the opposite party's standpoint, from an indignant though mistaken sense of wrong, often from confusion of thought. In such cases the mediation of clearheaded and disinterested arbiters may probably bring about a settlement with which both parties are contented. If the arbiter is stupid or partial, he may well do more harm than good: after the failure of a negotiation the parties are usually more irreconcilable than before, as each has convinced himself of the goodness of his cause even if he has failed to convince his adversary. Education, weight of character, readiness of sympathy, and a good position in the social and official scale are all means by which an arbiter gains a more ready assent or submission to his own conclusions. Some men have an incommunicable gift of winning others to their views, but apart from this the Conciliator's best chances of success consist in his being respectable and intellectually competent.

The idea that illiterate men of no commanding influence would make good Conciliators—better in fact than people encumbered with the useless accomplishments of reading and writing—was one of the most silly of the many silly notions which hung like a mist round the generation of the Deccan Agriculturists' Act. If the facts of a dispute are tolerably simple, and there is no collateral source of bitterness, the parties can agree without an official intermediary. If the facts are controverted and complex, and the bearing of natural equity and of the law rather obscure, it needs unusual penetration and quickness to disentangle the

relevant from the irrelevant, to place matters in the proper light and to bring them under sound principle that cannot be disputed. The Conciliator, if admissible at all in the more difficult class of cases, ought to possess natural sagacity, acquaintance with affairs, and practice in handling jural problems—all these indeed in a higher degree than the Judge who goes to work more elaborately and has a much larger mass of evidence from which to draw his conclusions. In France and the other European countries which use official Conciliators no disputes are brought before these functionaries except such as are of the simplest character. No evidence is taken. In the Deccan a Conciliator is called on to pronounce off-hand on the result of conflicting testimony and the obligations arising out of successive mortgages with joint and several rights of the members of Hindu families and all the complications that have grown up in generations of tranquillity and freedom in constructing legal interests in property. Such work is above the level of any ordinary Conciliator as the Deccan Conciliators are below the level of ordinary judicial work.

The conclusions I arrived at several years ago and which have been confirmed by further experience are that much litigation may be stopped at the threshold if only effective means are taken for subjecting it at that stage with the assent of the parties to skilled analysis and kindly influence. The principle, if it is a principle, is not at all confined to rayats and sawkars. It should be provided that in all suits of less than R500 valuation one-fourth only of the full court-fee should be paid in the first instance. The defendant should then be summoned, and the parties being brought face to face, the Subordinate Judge should, if he found it possible, suggest a settlement of the dispute. If the parties should agree on the terms proposed, or on any terms, these should be embodied in a decree; if not, the plaintiff should pay up the remaining three-fourths of the court-fee and proceed with his suit. It would so obviously be to the advantage of both parties to come to terms that the defendants refusing to attend would be but few, and the ability and skill of a trained lawyer would enable him in most cases to put matters in the right light for an accommodation. The results where the experiment has been tried have confirmed my views as to the great superiority of Subordinate Judges over unprofessional men as Conciliators. Their employment in this function should be systematized and made exclusive, at any rate for all cases except those of claims on simple contract.

An exception might be made in favour of retired Subordinate Judges who should be willing with honorary rank to aid the paid Subordinate Judges by taking up the work of conciliation in a certain number of cases. It is not to be anticipated indeed that a great deal of assistance would be obtained in this way. In 1879 I hazarded a prediction that hardly more than half a dozen really competent retired officials would be found willing to take the post of Conciliator in the Deccan. For this I was assailed as reducing the Deccan to the evil of Sodom and Gomorrah; but the forecast has been almost literally verified. The men who are really fit for doing the work which the Act has cut out for them, not merely for issuing certificates and filling places in a return, are, so far as I can learn, about six or less, outside the class of Subordinate Judges. Not many then could be expected to do honorary work; but unless ability, experience and integrity are brought to bear on it, it had better by far remain undone. For very simple cases, such as book debts incurred within three years, another class of Conciliators might be admitted. Neither class should take oral evidence beyond the statements of the parties, or go on with any complicated inquiry.

To the employment of Subordinate Judges as Conciliators an objection is raised on the ground that "if a party refused to follow what a Judge considered to be reasonable advice, the Judge might have a bias against him when afterwards hearing the case as a regular suit" No one, I think, acquainted with Judges and their ways will admit that there is any force in this It is the commonest of incidents for a Judge in hearing a cause to suggest a compromise. In a majority of instances the suggestion is rejected, yet no one suspects that the Judge is biased in consequence. Even when on the appeal of a party complaining of his decision his judgment has been reversed and he is directed to deliver a new one on further investigation, a Judge is still thought capable of acting impartially. The fact is that duties coming as matters of business are treated simply as such, and a Judge whose daily experience it was to have proposed arrangements, accepted and rejected, would feel neither elation nor resentment at the one or the other in any particular case. Oral evidence ought not to be taken by a Judge in the first investigation. He should merely hear the parties and look at any documents they produce. If he found the case an intricate one calling for detailed inquiry, he should decline to go further at the first stage unless the parties were quite ready for a compromise. Even in the latter case he should be vigilant to prevent injury to minors, women, and other ignorant persons through collusive decrees. At present there is room for fear that much

mischief is done in this way, the full result of which will not be manifest for many years to come.

In paragraph 22 the opinion is expressed that "the registration of every instrument affecting title to immoveable property should be compulsory........................and the kulkarni of every village where the land is situated should be furnished with a note of the registration which he should enter in an Index book against the number of the holding referred to."...... ..."The registration of mere money bonds should not be compulsory in the case of sums below R50." I concur in this and have expressed similar views for a good many years past. In the case of land it may be supposed that the Transfer of Property Act will some day be introduced into Bombay. That Act requires registration or actual delivery of possession to give effect to a sale or mortgage: a lease also, if it extends beyond one year, must be registered. As a member of the Indian Law Commission, I contended for the registration of all transfers of title to land, and wished to provide a simple and inexpensive mode of registration for cases in which the value was small. The instrument might be sent by post with a registration fee in stamps and a brief description returned by registered letter to the executant, informing him that the instrument had been registered. Once a month a list should be forwarded to every village whenever an instrument had come for registration to be exhibited for certain days at the chavdi and then returned with the signatures of two or three villagers able to read and write. This would make it pretty certain that the owner of a field and every one interested in it would know when any transaction, real or fictitious, had been entered into with respect to it. The Index would tell every one concerned where full information of incumbrances could be obtained.

As to the suggestions in paragraph 42, it would not be possible, I think, by any arrangement to obtain perfect security against fraud and at the same time retain the facility of the late indigenous system of borrowing, by which a rayat gets two or three rupees just when he wants them. But in the more important cases I have long thought that a prompt and cheap procedure analogous to that used in the case of negotiable instruments might be provided for all cases. By this when a duplicate facsimile of a bond had been sent to the Registration office and thence (after affixing a number and stamp and taking a brief note of the document) by registered letter to the obligor or promissor, the latter would be bound to pay on a summary application unless he could prove payment. Along with the duplicate sent to him from the Registration office a memorandum should be sent telling him of the obligation he had incurred and warning him to get all payments on account endorsed on the bond or on the duplicate in his possession.

It would not be desirable, I think, to fix any precise aliquot proportion of a debt as the minimum instalment of which a Court might order payment in each year. But the Subordinate Judges might be told they are to use their discretion discreetly, and unreasonable orders should be rectified in revision or appeal. The making of a fresh instalment order just when an instalment is falling due so as to defeat the creditor's reasonable expectation should be prohibited.

Of the scheme set forth in paragraph 38 I should like to hear the opinions of some intelligent and thriving members of village communities. My own impression is that in a few villages favourably situated the plan might possibly succeed: in a larger number it would be perverted, and in most it would not work at all. The proposal amounts to making Government the capitalist and the village panchayat the petty sawkar in place of the present (or late) self-acting system. Now the Government could not successfully add to its already too numerous functions, that of a great banker perpetually on the watch for indications of where he ought to extend or contract accommodation. If, as proposed in paragraph 39, a mere section of the village community were to be allowed to unite in a borrowing association, it is pretty certain that such a society would generally comprise the thriftless rather than the thrifty villagers. The security which each of these could offer being represented by zero would not be increased by multiplication. Even if the whole community joined, that in the poorest villages most needing aid would still be insufficient: a hundred paupers would not give better security than one and would be a hundred times as unmanageable. The Government, it may be said, would not lend in such cases; but if so, it would deny assistance where assistance was most required. It would be subjected to perpetual pressure; its information would be very defective; every local official would be in a position to make a reputation for benevolence at its expense; poverty would be displayed and improvements kept back in order to support demands for remissions; and occasional severities would fall as a rule on those who deserved them least and could least bear them. Let the Executive once assume the function of lending money to promote cultivation or to alleviate distress, and it wil be called on most loudly and persistently from those quarters which can offer but the

worst security. It must hold its hand at some point and will then be charged with wilful starvation of the people after driving their money-lenders away.

In considering any scheme of this kind we should never lose sight ofthe fact that money-lending either on a large or a small scale is a business which to be beneficial and prosperous calls for the possession of special abilities and special knowledge. Men who are opulent compared with their wants and transactions do not seek advances on credit. Of those who do seek such advances some are merely sinking by degrees into poverty, some are prudently enterprising, some are widely speculative. If a banker refuses advances where there is any risk, he makes but little profit and does no good to the community. If he advances carelessly, he does positive harm. To make his function useful he must in general make his business profitable by a sagacious estimate of individual character and circumstances. How is a Government to exercise this sagacity in the case of unknown groups of claimants scattered all about the country? If it lends freely it will certainly lose. If it is too stingy in making advances or surrounds them with too irksome formalities, it must check enterprize and industry where it ought to foster them. It is just on the border between safety and extreme risk that the banker plays his most useful part. He is present to help and to refuse help in exactly the right cases. Can a Government imitate him by lending always in the right quarters and neither too little nor too much? Banking on philanthropic principles lead straight to insolvency; banking in ignorance deserves no certificate.

As the Government would supply capital for the tolerably well-to-do classes at a cheap rate, the richer rayats would thus find means to lend to the poorer ones at enhanced rates. The community at large would in this way furnish money at less than the market rate to a particular set of persons and so enable them by degrees to oust a large proportion of the peasant proprietors from their present small holdings. If the Government risks the money of its other subjects, it ought to realize the benefit for them and reduce their taxes in proportion. The native capitalists meanwhile, whose function it is to bring their means into fertile application on the natural sources of wealth, would be discouraged and impoverished by a rivalry supported by the taxes levied from themselves as members of the whole community. More is to be hoped from free competition and variety of action than from this artificial enrichment of one class at the cost of another.

As Government would occupy the field in dealing with the highly solvent class and would end at artificially low rates, the sawkars would for regular business be in a great measure driven out of the market. More capital, it may be thought, would thus become available for borrowing by the poorer classes, but in fact capital is now very moveable. The better class of sawkars desirous of a safe and respectable business would transfer their money elsewhere, and the needy rayats would be left more than ever at the mercy of the disreputable class who obtain a reward for great risk and trouble by means of extortion and trickery. The more the respectable sawkars are encouraged the better the tone of the whole class is likely to be. There is a competition amongst all sawkars without any precise dividing line between their businesses, but Government loans would shut out all rivalry on one side of a line and exercise none on the other. The poorer rayats, it may be said, would be saved from resort to sawkars by the Panchayat. As a rule they would not, except under a system which would give them control of the panchayats. Such a system could last but a short time; its most remarkable effect in some places would be a transfer of all burdens to the more prosperous class, in others to the Government. This last indeed would be the ultimate tendency of the scheme throughout.

It seems doubtful then that the Government could do a capitalist's business so profitably as the capitalist either to itself or to the borrowing class and the community. Personal ability, training, experience, and even sordid aims are elements of success which the individual has and the Government has not. But moreover "the sawkars have custom and tradition on their side and are from policy sympathetic with the rayats and considerate of their conveniences." When they add these qualities and advantages to a superior mastery of their business, what excuse is there for superseding them? The Government has not custom and tradation on its side. It cannot afford to be sympathetic and considerate without a minute knowledge of individual cases. The sawkars' system which has been moulded by a contact of centuries to the character of the people is presumably better fitted to their needs than any other. What it wants is a few such modifications as will adapt it to the altered external circumstances of the present day. The idea that any Government machinery will supply the place of individual knowledge, enterprize and astuteness is to my mind purely chimerical.

As the loan operations of the panchayat would in most cases be virtually limited to the accommodation of the rayats who could offer good security, or in other words to the solvent members of the community, the question of *cui bono* arises as to the whole scheme. "The sawkar can place much reliance on a rayat's word, but not if he has no property to back his word." Those sawkars ...... are ...... sympathetic with the rayats and considerate of their convenience. "Solvent rayats will be able to borrow from sawkars at as low interest as from the bank." The bank proposes to lend at 9 per cent. Even the Deccan Agriculturists' Act "has scarcely, if at all, affected the credit of solvent rayats," the reason being that their dealings with the sawkars are never subjected to the actual operation of the law but "according to custom continue without heed to Limitation laws, Relief laws, or any other laws." Such being the relations between the capitalists and the borrowers, who alone would be accepted by the panchayats, in what way could these borrowers be benefited? Their transactions would be in every way more hampered with forms and conditions. As debtors within a system they would be subjected universally to the watching and control found necessary to maintain the integrity of the most shifty and impoverished debtors. The infinitely varying adjustments to circumstances which are practicable and usual between individuals having mutual confidence and a good understanding, would become impossible. The elaborate machinery devised for a relief which no one wants would tend to bring experiment, enterprize, and the interchange of advantages and values to a stand-still. That so dismal a result would actually be reached is not indeed to be apprehended. Men's instincts and interests fight strongly against unnatural restraints. But the obstacle which cannot be an absolute barrier may still be a serious obstruction to progress; and ingenuity is but ill exercised in guarding people against dangers they do not fear by regulations that they hate Were the peril great, the subjects simpletons and the regulating authority endowed with infinite wisdom, the case might be different.

In the remarks I have next to offer on the proposed system of joint liability and of Government loans through panchayats I will take it for granted that these Committees are really formed and supplied with the means to make them effective. If, as paragraph 39 assumes, the whole arrangement is to be purely voluntary, it is hard to see how any effective organisation can ever be arrived at. "If in any village a sufficient number of sufficiently solvent members agree to form a union" for mutual assistance and assurance, there is nothing that I know of to prevent their forming such a society now. But the first precaution such a group of the peasant proprietors would take would be to exclude all men of doubtful solvency from their association. They would even look askance on any one whose known enterprize might be a source of trouble. It is said of such an association that "traditions of village co-operations of past times would support it. It would practically provide every village with its own bank." The co-operation in past times, however, in which villagers united was a co-operation for the obvious necessities or gains of all. In the proposed scheme the wealthiest and most influential men would have nothing to gain except by indirect means, so that the basis of true co-operation would be wanting. Again, to provide every village with its own bank is not to insure the bank's prosperity or usefulness. In so far as money was obtained from Government at an artificially low interest, the village community in some one or other of its members might profit by the whole difference between that and the market rate. But a banking business in the circumstances in which it can be really beneficial and a means of progress is no more within the competence of a casual committee of village elders than of the executive Government. It is assumed that "many improvident occupants might in this way find means to plunge as deeply into debt as at present." Their debts would fall on the village community. The panchayet would but share this loss, while a sawkar creditor would have to bear it all. Nor could the panchayat honestly gain as individuals by more successful management. Thus the stimulus of personal gain and loss would be equally absent as to special capacity which the sawkar has inherited or gained by assiduous training. The personal discrimination, the instant advantage taken of opportunities, the risk assumed in the hope of extra gain—all these, the chief sources of prosperity where the individual strives to force his way to the front in the struggle of life, would be wanting to the panchayats by whom the sawkar was supplanted. The sawkar would have to live by loans to the poorest class excluded from the bounty of the panchayats, and having no customers, or but few, of assured solvency, he would have to impose terms even more extortionate than in the past. Thus an arbitrarily low rate of interest in the case of those who needed assistance least would be accompanied by an abnormally high rate in the case of those who needed it most. They would become more than ever the slaves of the sawkars, while they were rejected as the slaves of the panchayats, and would rapidly sink into the condition of pauper labourers.

The panchayat is to be elected. By whom? the solvent or the insolvent? or are these to be representatives of both classes? In many, if not most, of the Deccan villages, the insolvent class constitute a majority. The villagers who are secretly in debt may be as large a number as those whose obligations are known. All such would naturally unite in electing a panchayat of their own class or composed at least of men without an interest in the lands of the village serving as the ultimate security for Government loans. It would require much ingenuity and elaborate arrangements to prevent the election of representatives whose first business it would be to saddle the community with the debts of its insolvent members. Let us suppose, however, such arrangements can be made and worked successfully, the wealthier class of the village community then have—as for security they needs must have—a dominating voice in the panchayat. The panchayat will have been elected rather for the protection of the wealthier than for the accommodation of the poorer class. If then a rayat known to be in straitened circumstances, or of a more adventurous spirit than approves itself to the village wiseacres, should seek a loan to carry out some improvement, their natural tendency will be to refuse it. They would thus guard themselves and their constituents against risk. In the success of the proposed enterprize they would have no share, while the burden of failure would fall on themselves and their electors, and why should they take the hazard of loss without any share in the possible gains? It is certain, that under such circumstances, the persons most needing loans and at the same time the best disposed to apply them profitably would find it impossible to obtain them.

The capital of the Government, that is, of the great body of the taxpayers, would, in the meantime, be drawn upon by the agency of the panchayats for quite other purposes. While money would be advanced by Government at an artificially low rate, the villagers who could not obtain an endorsement of their applications from the panchayat would willingly pay to any lenders a rate of interest and premium not greater than what the ordinary sawkar would exact. The members of the panchayat able themselves or through their dependents to borrow money at 6¼ per cent. would not be slow to avail themselves of the opportunity of taking sums at that rate in order to lend them at 12 or 15 per cent. The desire to place themselves in this advantageous position would indeed induce some as members of the panchayat to refuse many applications in themselves quite unobjectionable. But besides transactions of this kind it is inevitable that amongst the applications laid before the panchayat, undue favour should be shown to those proceeding from connexions, friends, and debtors of their own. In many villages it is notorious that the community is divided into factions with more or less of rancorous mutual hostility. Where this is the case the party which had gained an ascendancy in the panchayat would take care that all the loans required by its own adherents were fully satisfied before their adversaries' applications were admitted to a hearing. The class thus excluded from the intended benefit would harass Government with complaints, and amongst many complaints that were well founded, there would be not a few resting on exaggerations or absolute misstatements. It would be impossible that Government should decline to entertain such complaints, and thus a new and embarrassing source of trouble would be opened to its members and the officers subordinate to it.

It is to be supposed and hoped, however, that some at least of the panchayats once formed would rise superior to the influences by which others would be overcome. They would consider applications fairly and give the endorsement by which a loan would be obtained at the Government treasury. It would happen, however, in not a few instances that they had miscalculated the means of the borrower, or that altered circumstances or even the mere possession of an unaccustomed wealth had wrought an evil change in the borrower's character. He might be disposed to apply the borrowed fund to any but the intended purposes, even to abscond from the village where his obligations were intolerable. It would be necessary to provide the panchayat with some authority to check abuses of this kind, but such authority could not be given without itself being subject to abuse. The borrower, and his son, and grandson would be fast bound, in the ties of necessary obligation to the village and the panchayat. Freedom of movement and personal initiative would be hampered or annihilated, and the village society would soon reflect the stagnation and torpor of the Russian Mir.

It is inevitable that in working under article (6) of paragraph 38, disputes should sometimes arise as to the responsibility of an alleged debtor, especially in those cases in which the original borrower had died, and his property had passed through intervening hands to a collateral relative. Should the debtor in such a case belong to a dispised class or to an antagonistic faction, it is not to be expected that he would in all cases be treated with perfect fairness. In very few would he suppose that he had been so treated. Thus a new element of

division and mutual animosity would have been infused into the village community. Should the settlement of the contentions hence arising be undertaken by the Executive, it would have assumed a troublesome and invidious task with the result of making its future exactions on loan account from the defeated parties doubly hateful. Should the duty be cast on the Civil Courts, a new source of factious litigation would be opened. A Government regarded with some jealousy ought to hold aloof from the sordid contests of petty selfishness; a benevolent Government ought to avoid arrangements by which one class or party in a village will be enabled to harass and exasperate another.

If the panchayats venture beyond the bounds of the most timid prudence as they must do to be of any real use, it is desirable that we should look into some of the probable consequences. As all the lands of a village would virtually be pledged for all its debts, any intending purchaser would have to consider not only the known charges on the land offered to him, but the possible burden of extraneous debt that might be thrown on it. This would hardly ever be capable of exact appraisement; it would have to be liberally estimated to cover contingencies, and thus all the lands in the village would be unduly depreciated in market value. Similar risks would attend succession to a rayat's holding by transfer, and even the taking up of vacant Government land. An industrious rayat might be quite willing to incur the burden of the assessment and to invest his labour in an available field who would still shrink from the incalculable risk of having to pay his neighbours' debts.

If any means rather than another is likely to prove effectual for raising the standard of practical intelligence and the economical condition of the Deccan, it is probably to be found in improved methods of agriculture. The traditional system of cultivation has been wrought out by centuries of experiment to the limit of its capabilities. Now the rayat has to work under the conditions of peace and protection, of good roads and accessible markets. On the other hand, he has to submit to a rigid system of taxation and to face an unlimited competition. The rewards of industry have to be gathered at continually increasing distances. These external circumstances invite to cultivation on a larger scale, with greater organization, governed by a wider reaching intelligence, claiming a higher remuneration than in the past. The advantages of the situation can be appropriated, its evils avoided, only by the judicious use of capital in larger masses and sunk for a longer time than heretofore. But who will sink capital in an estate subject not only to its own burdens but to those of the whole village? As long as a man holds his fields unimproved he can resign them the moment a charge is laid upon them which makes the tenure unprofitable; but when he has dug wells or formed terraces, he cannot escape. He has given security to fortune, and must take such blessings as the panchayat dispense to him. The close calculation of enterprize may show that a tract of unoccupied land will with certain improvements just pay for the expenditure requisite for bringing it into cultivation. The complete uncertainty of a panchayat's pliability and of villagers' improvidence will baffle calculation and keep the prairie an unopened treasure still.

A necessary consequence of joint responsibility would be that whenever the richer members of the village community (who would generally be the shrewdest also) found that borrowing had proceeded to a hazardous extent, they would try to free themselves from the risk by getting out of the community. In the case of lands much improved this would not perhaps be easy, but it would be managed through loans to purchasers procured from the panchayat. Unimproved lands could easily be sold or simply resigned. Thus there would be a constant tendency to the replacement in the poorer villages of a more thriving by a less thriving proprietory and to the withdrawal of those who could afford experiments without risk of immediate ruin in the event of failure. The more heavily a village as an aggregate became incumbered the more anxious would the well-to-do land-holders be to get rid of their interests in it. This would especially be the case in a time of impending or actual scarcity. The panchayat, however, and those men of substance who could not get away for their liabilities, would naturally object to men of straw being given to them instead of solvent sharers of the common burdens. It would be necessary in order to prevent panics, or the timid apprehensions which would produce an entire refusal of loans, to give the village community authority to check desertions, otherwise village insolvency would in hard times be not at all unusual. Village insolvency would swallow up the claims of the Government, and the men of substance who had got out of the community to avoid the crash would get into it again on easy terms. In some villages indeed it might happen under the present system of tenure that three or four of the wealthier men would for their own purposes join in a combination with several poorer ones by which money would be raised to the extent to which the village property would bear incumbering

and then the richer resigning their holdings, the Government would be defrauded by the impossibility of enforcing payments from the penniless residuum of the village population.

A difficulty would arise in the case of mortgages. A land-holder may be tolerably well off and yet some of his fields may be mortgaged. Indeed a perfect system of land credit amongst small proprietors implies that the estates are mortgaged at low interest for capital used in cultivation to produce large profits. But suppose the case of a village borrowing pretty largely so as to impose an appreciable risk on all the solvent land-holders. The security of every mortgagee would be diminished to a corresponding extent. He might not be, generally perhaps would not be, a member of the village community. His interest therefore would be disposed of where the margin was at all narrow entirely without his having a voice in the matter. Capitalists are a sensitive class, and it may be surmised that whenever they could, they would call in their mortgages in a district subjected to the proposed system, and employ it elsewhere. Where they could not withdraw their capital it would be necessary for the Government to guard it against fraud, for otherwise where lands were heavily mortgaged the villagers by borrowing largely from the Government and then failing to pay might throw the whole burden of their debts upon the mortgagees. As private capital was withdrawn, the drafts on that of the Government would increase, and by-and-bye His Excellency the Governor in Council would monopolize the business of keeping the ricketty spendthrifts on their legs throughout the province subjected to this system of spoon-feeding.

A system of joint responsibility to the Government would make it almost as essential that the village community should have the control of admissions to membership as of proposed withdrawals. It would be impossible to hold a community responsible for the debts of a class of men whom it had no power of excluding from membership. The panchayat might refuse loans to such men, but then, on the one hand, the proposed measure would so far be made inoperative, and, on the other, the village lands being assigned to occupants of no substance, the villagers, when any pressure came, would complain loudly of the deterioration and enfeeblement of their community by the introduction of cultivators without capital, skill or industry. It is hard to conceive a system of joint liability working save in combination with one of joint control. In the native administrative system which preceded the introduction of the British Government in the south of India, the collective liability of a village population for the claims of the Government was accompanied by discretion to admit or to reject anyone who wished to take up village lands and become a member of the community. Documents still exist by which this or that individual was formally received after a vote of the village brotherhood into membership. Additional strength and resources were looked for on such occasions; a poor and weak man would be rejected as likely not to contribute his fair share according to the area of his holding to the compulsory disbursements of the village. Hence arose an extensive system of subletting. The members of the village community, rather than admit impecunious strangers, took up the unoccupied lands themselves and farmed them to outsiders as tenants on terms of a division of produce. Similar circumstances would no doubt in many cases bring about similar results in the Deccan, and we should have the land owner intervening between the labouring rayat and the fruits of his toil. I do not say whether this would in itself be undesirable or the reverse; it would at any rate be a defeat of the policy of the Government.

When the village community is answerable for the debts of the individual members it will not long be tolerated that a debtor should be at liberty merely by resigning or transferring his holding to escape his liability to the panchayat. The endorsement of his request for a loan will have been made as much in reliance on his personal characteristics in all probability as on the market value of his land which indeed may be almost *nil*. But the authority of the community could not be limited to the control of transfers and resignations of land. A careless or speculative mode of cultivation would expose the community to the risk of having to pay for the enterprizing rayat's experiments or the indolent rayat's neglect. The remedy of law suits and imprisonment is not one which could be effectually brought to bear by a community on its members. A prompter compulsion would be needed and a more effectual control. The control would bear upon the debtor's cultivation of his land: it would probably ensure a certain slavish diligence, but it would frown upon enterprize in those subject to it and retard every improvement. Timidity and narrow-minded prejudice would preside at the village councils, the dread of general loss would far outweigh the desire for progress, and an irresistible pressure would be brought to bear on any debtor who proposed to diverge in his tillage from the beaten track approved by rustic wisdom.

It is only one step from a discretion in admitting and controlling members to a faculty of expelling them. The retention of worthless rayats would in fact do just as much mischief as

the admission of them, and where all had need of honey the drones could not be permanently tolerated The extruded members would partly become labourers, partly sub-tenants, paying a rent besides the assessed land tax to which they had been subject as occupants under the Revenue Survey. To escape expulsion some would "commend" their lands and themselves as under the feudal system to their stronger neighbours. They would thus gain protection and sustenance in return for independence. The agglomeration of holdings would go on at an accelerated pace, and population increasing in defiance of prudential considerations would by degrees fill the province with a mass of small tenants always on the verge of pauperism—ignorant, idle, an d querulous—taught by past interpositions to look to the Government for extrication from every difficulty, and throwing the blame of their own improvidence or misfortunes on the un-Indian rule to which theywere subjected. We are told that already the rayats universally look to the Government to pay off their debts to the sawkars and to supply them with future advances. This shows how quickly the semi-mendicant spirit of dependence is acquired: it leads to ever-growing demands which in their very nature cannot be satisfied, and becomes in the end the most dangerous source of disaffection.

The considerations I have urged as sume that a panchayat could in fact be formed and that the village would submit to its financial domination. But paragraph 39 begins: "Of course no occupancy-holder could be made to contribute to payment of another's debts without his own consent to the arrangement." If this principle is to be observed, the well-to-do rayats of the village will never join in ejecting a board through which their property would or might be given in pledge for all their thriftless neighbours' debts. Nor would men consent to the members of a panchayat bound to the odious alternative of ref using loans to poor men or exposing wealthier men to ruin. It would be necessary to make the membership of the panchayat obligatory in order to secure the services of respectable and responsible villagers. This done, the members of the panchayat would occupy a position not much more enviable than that of the civic "curiales" in the decay of the Roman Empire. They would have everything to lose by the discharge of their functions, nothing to gain, unless it were through secret bribery or the illicit perversion of their sanction and authority.

Famines and seasons of scarcity will, it may be anticipated, occur not less frequently in the future than in the past When a few years ago bad times and overgrown liabilities had made the rayats unable without great suffering to pay their sawkar creditors, the Government stepped in and set the debtors free, so that, as we have lately been officially told, these were comforted and the others tormented. Is this history likely to be forgotten when in a new time of dearth the Government has become the universal sawkar as well as the univeral landlord? Ignorant rustics know no more of economical science than the majority of those who boast some culture; they look on the resources of the Government as virtually boundless and will think it gross cruelty if their claims for remissions are not listened to. Is an insurance rate to be levied to meet such remissions? Where then is the advantage to any thriving cultivatory? Is no such rate to be levied? Then widespread discontent will prevail in the Deccan whenever the drain of an unfruitful year is increased by the double exactions of the Government; or else the burden of the enervated communities taken from their shoulders must needs be placed on those of less favoured subjects elsewhere. Perhaps indeed both results may be realized; historical examples are not wanting to show that it is possible to give relief and yet be repaid with calumny and detestation.

In recent times an entirely new set of economical conditions has been introduced into India under the British Government, and these through the natural interaction of social necessities and institutions would in the ordinary course bring about great changes in the system of agriculture and the employments connected with it and the allied branches of industrial enterprise. The part of a wise Government in such circumstances is not to take the work of devolpment out of the hands of its subjects, but carefully to remove from time to time such legal and administrative anomalies as have become impediments in the way of progress. The astuteness and manifold ingenuity of the million will do the rest, working under the constant stimulus of self-interest and with an infinite knowledge of details such as no Government or bureaucracy can ever possess. In the readjustments that attend every great change in the political medium in which a national commerce lives and grows, it is inevitable that some classes should sink in importance and in their command of material comforts, while others rise. Adaptability is esssential to continued existence in this as in other spheres. All that a Government can really do is to free the transition from hardships that spring from the Government's own constitution and mode of working, and to facilitate as far as possible the acquisition by the suffering and declining class of some aptitudes which may enable them to

retain a place, however humble, in the new system that is rising around them. The first element of success in such a work is that a Government should recognize the necessary limitation of its powers. It cannot by any ingenuity or exertion make the simplicity of the past co-exist with the complexity of the present. In the free movement, the prompt seizing of advantages, the self-seeking energy which are sources of economical progress, it is quite inevitable that as some push to the front others should fall to the rear. The alternative is stagnation declining constantly towards a lower type of physical and moral being. Some suffering must be endured by the more helpless : it may be alleviated, but if the Government sets itself in one direction, as is now proposed, to work on principles diametrically opposite to those by which its other activities are governed, there must be a waste of power by which every class will lose. The central principle of English Government, the idea by which we unconsciously regulate our political and social arrangements, is that of individual freedom and activity and responsibility. Our institutions embody it, our legislation assumes it. Our whole public training and traditions unfit us for carrying out the work of civilization on any other basis. To cramp and clog the intelligent rustic, planning, sparing and toiling for competence, with a liability for his feeble neighbour's incapacity is the surest way to degrade all alike to one dead level of imbecility. It would dry the spring of private and public prosperity, augment the work of Government, cause frequent blunders through the conflict of principles, and finally prove an impossible system in the hands of English administrators.

1st September 1883. R. WEST.

Memorandum on the Deccan Agriculturists' Relief Act, and a note by the Chief Secretary, dated August 1883, with connected correspondence, by W. LEE-WARNER, Esq., 1st Assistant Collector, Satara, dated October 4th, 1883, No.

1. *Preliminary.*—Mr. Gonne has with the permission of Government sent me a collection of Reports upon the Deccan Relief Act with an exhaustive note prepared by him, and has invited my criticism upon it. The subject is one of great difficulty and complexity, and the different views which have been recorded upon the results of the present law from different stand-points increase the difficulty of selecting those matters on which I can offer any useful opinion. I have also been absent from Satara for the last ten months. On the other hand, while in charge of districts in the part of the Deccan I took particular pains to make myself acquainted with the effects of the Act, and during my absence in Calcutta I served upon a Committee which considered the question of Government advances for agricultural improvements. Notwithstanding these advantages, however, I feel somewhat diffident about placing myself in opposition to views which are advanced with great ability and experience, and if I seem to express myself in a tone of undue confidence, I hope that it will not be assumed that I have overlooked the arguments on the other side, or that I presume to know better than others on a subject regarding which the highest authorities have agreed to differ.

2. *Division of the subject.*—Without attempting any detail criticism of the reports sent to me, I propose to offer a few remarks upon that which must be regarded as supplying the foundation upon which the Chief Secretary's note is built. I shall then explain the conclusions which I have drawn from my own experience, such as it has been, of the Act, drawing particular attention to the matters of compulsory registration and of conciliation; and I shall discuss the proposed measures of liquidation, Government advances, and agricultural banks. My note will be concluded with a few general observations on the present position of the agrarian question in the Deccan and the need which in my opinion exists for delaying further experiments or interference on the part of Government until rural society has been reconstructed upon the basis of the existing law.

3. *Mr. Woodward's Report.*—I am not the first to remark that Mr. Woodward has been led to express himself with some measure of inconsistency in regard to the effects of the Act. That his verdict is on the whole decidedly adverse to those which attack the Act is sufficiently obvious, but he has given to his distinguished antagonists (specially Mr. Justice West) every possible handle against him. Mr. West adopts Mr. Woodward's conclusion "so bluntly stated" that the Act "has relieved the rayats at the expense of the money-lenders." Mr. Gonne finds that "it is not too much to say that the sawkar's power of legally compelling an agriculturist to pay his debts has been abolished." If these unqualified assertions were substantiated, the Act would stand condemned. I shall endeavour to show that according to my experience they are not justified by the facts. In attempting this I may claim to be regarded as free from prejudice. I have no particular sympathy with the creditor. My sympathies are with the

rayat; but in an article which I wrote in 1879 I argued against the Bill, then before the Government of India, on three grounds. I thought (1) that the exceptional remedial legislation proposed would interfere with the free play of supply and demand, and would discourage thrift and enterprise by substituting State aid for self-exertion; (2) that by teaching an indebted proletariat the fatal doctrine of *tabulæ novæ* it would offer a premium to agrarian agitations in the future; and (3) that by benefiting one class at the expense of another its results would be injurious to public morality and ruinous to capital. My apology for referring to these views is to strengthen my confession that the last of my conjectures has not been justified by the fact. I must quote Mr. Woodward's testimony against himself, and that of Mr. Ranade against Mr. Gonne. In the same paragraph from which Mr. West quotes, Mr. Woodward qualifies his previous unguarded statement as follows: "As I have above observed, the settlement of what is due from debtors to creditors is progressing rapidly and smoothly." It is true that Mr. Woodward had written in paragraph 11: "The sawkar is practically debarred from resorting to the Courts." On the other hand he admits that the cases are rare where sawkars have left their villages, and he adds that these cases can be explained independently of the Act. Mr. Pollen, who on this aspect of the Act is an exceptionally qualified judge, remarks: "I can find no evidence to show that as a class money-lenders are scared out of the Courts:" and an attentive perusal of the whole of Mr. Woodward's report seems to confirm my own experience and that of Mr. Pollen, namely, that good debts can be recovered as easily if not more easily than before, while ancestral and paper debts due by rayats (who have been practically insolvent from the day on which they entered upon their nominal inheritance) have suffered considerable diminution. I have been told more than once that a sawkar's partner brought R30,000 into the business five years ago and would clear out if he could sell for R6,000. On inquiry I have found that his contribution to the partnership was represented by paper bonds nominally worth R30,000, which under the old law represented the enslavement of a certain number of paper-debtors whose perpetual squeezing by decrees *in terrorem* and by threats of eviction brought in a good profit of 12 per cent. on the paper debts, but which under the new law require a judicial investigation behind the bond, confer no power to enslave the predial serf, and even involve a risk that the victim will declare himself insolvent. That such a business should be depreciated and checked warrants no indictment against the Act. Mr. Ranade writes more precisely to the following effect (paragraph 5): "This disturbance has been confined to a degree which none who has not watched the practical working of the Act could have anticipated, being limited to a reduction of the exorbitant interest charged, and seldom touching the principal." I confess that my own anticipations have been corrected by practical experience in the direction indicated by Mr. Ranade. Again Mr. Ranade writes: "Old sawkars still lend, the better class of them especially, as freely as before, though the middlemen have no doubt suffered in the margin of their profits." On the whole, then, I think that Mr. Woodward cannot wholly, and Mr. Pollen and Mr. Ranade cannot at all, be appealed to either by Mr. Gonne or by Mr. West as justifying the assertion that "it cannot be denied that great injustice has been done to the money-lenders with the result of impairing the credit of poor rayats." To this last effect on the rayat's credit I shall revert presently; but before doing so I will briefly state why I think that the Act cannot be condemned on the first of the four objections cited by the Marquis of Hartington, namely, that a creditor of an agriculturist cannot recover a debt justly due. It is quite true that the clauses of the Act regarding insolvency and management by the Collector have not given to creditors one form of relief in the precise direction in which it was supposed they would operate. But the creditors themselves are in the main to blame for this. They have found it better not to "move the Courts" to take these extreme steps. They have preferred to squeeze their debtors in other ways which are still open to them; and in the meanwhile they have derived considerable benefit from other clauses of the Act. For instance:—

(1) The very expenses of working the Act, to which Mr. Gonne refers, have saved the sawkar's pockets. If the procedure of the Courts has been improved, justice cheapened, and costs reduced, the class of creditors must have benefited as much as, if not more than, that of debtors. Again,

(2) Mr. Gonne in his note writes: "The conciliation system is popular with creditors." He argues, it is true, that the system does not work as it was meant to work, but in estimating the effect produced by the Act upon creditors I accept his statement that in this respect the present law is favourable to the sawkar.

(3) Mr. Ranade writes: "That the Act does not involve spoliation of the sawkars is clear from the fact that the average reduction of plaintiffs' claims on money-bonds seldom exceeds 33 per cent., which means that its influence is chiefly spent in a reduction of the rate of interest." This is a very small reduction to set against the prompter and cheaper justice administered by the Courts.

I have already referred to the fact borne out by my own inquiries that the sawkars have not abandoned their old haunts, and so far as my experience goes I cannot believe that the trade of respectable money-lenders has been seriously injured, much less destroyed by the Act.

On one other matter, besides his unguarded statements about sawkars being scared out of Court, Mr. Woodward's report challenges criticism. He gives figures to show that in 1879, the license-tax receipts exceeded 3 lakhs and in 1881 were not much more than 1½ lakhs, He infers, and Mr. Gonne also accepts the figures in order to found on them another inference, that the decrease in the revenue is another index of the sawkars' diminished profits. Now I have no records to refer to, but I am almost confident that Mr. Woodward has made no allowance for the alteration of the schedule of taxation. In 1880 the lower classes of taxable income were relieved, and no incomes were assessed which could not pay R10 per annum. The full effect of the change was not felt till 1881 for two reasons, partly because no measure of relief immediately takes full effect, and partly because in some districts the license-tax appeals for 1880 were not disposed of until 1881. I am inclined to believe that, if this cause of reduction were eliminated, the proceeds of the license-tax between 1879 and 1882 would be found to support an argument directly contrary to that brought forward by Mr. Woodward. In fact, I think that the proceeds from the same classes of taxable income have increased rather than diminished. Petty shopkeepers and not sawkars were the chief contributors to the R5 rate of license-tax.

On a few other points in Mr. Woodward's report some cursory comments may be made. He quotes the opinion of Mr. Jopp, and Mr. West finds the same opinion too useful to be lost sight of. I received charge from Mr. Jopp of his districts in Satara, and other duties connected with the Vir Basin compensation compelled me several months afterwards to transact business with some of his new rayats in the Purandhar Taluka of Poona. I am anxious to avoid personalities, and therefore refrain from explaining, as I think I could, the reasons which led Mr. Jopp to form his conclusions. I content myself with setting my own opinion and my own experience of the Satara rayats against that of my predecessor. If I may speak with certainty on any point connected with Satara, I can do so on this. I am convinced that the Deccan Relief Act is regarded by the rayats as the very charter of their rights. I have received numerous mass of petitions from the rayats of Phaltan and Bhor (Native States) begging me to induce the Jaghirdars to introduce the Act into their territories. Throughout my Satara talukas I found only one opinion entertained by the peasantry as to the advantages of the Act from their point of view. When I subsequently passed into the Purandhar Taluka of the Poona District I found that most of the people with whom I had business were ignorant of the chief provisions of the Act; but when they understood them they seemed anxious to take advantage of them. Mr. Woodward and Mr. Gonne notice that the Act seems more appreciated in Satara than elsewhere, and they suggest that the greater fertility of the soil and prosperity of the Satara rayat is the cause. I have made inquiries from District Officers in the other Collectorates on this point, and I am inclined to believe that it is only because greater pains have been taken by the Assistant Collectors in Satara to make the people acquainted with the Act. That was certainly the personal experience of Mr. Muir Mackenzie, who came to Satara from the adjoining district. While on this point I must observe that I quite agree with Mr. Woodward in recommending that the Act be made more public. I think that a few easy lessons in the departmental text-books for village schools would serve the purpose. When I was engaged in taking up land in the Purandhar Taluka, I unravelled several very sad stories of ancestral debt, defeated justice and oppression of rayats. One single story taken from life with the account of successful relief accomplished under the operation of the Act, would do more to show the rayats the road to relief than fixing up a copy of the enactment in each one of the four or five thousand village chavdis of the affected districts.

Mr. Woodward says that the sawkars are "so convinced that justice cannot be obtained under the Act that they are willing to compromise debts at one-half or less their actual ascertained amount." On this subject I can speak with some confidence. Mr. Elliot compromised several thousands of rupees of debt in native territory where the Act did not run: and

his average rates were far less than one-third of the nominal debt. I compromised debts not only in the Bhor villages of the Vir Basin which are not affected by the Relief Act, but also in the Satara and Poona British villages to which the Act does apply and which adjoin the Bhor villages. In the Native State villages the rate of composition was far less than was accepted in British villages, and in the latter I frequently found that if the debt was a fairly recent debt the sawkar would accept very little abatement, sometimes none at all, on his bond-money. I am compelled to be brief, but I feel sure that I could prove to Mr. Woodward's satisfaction that the Deccan Relief Act has no bearing whatever upon the rate of composition which money-lenders will accept. They will take less in a Native State, where the law is uncertain, than in a British village affected by the Relief Act: they will take less for a long standing claim than for one newly created, and they will raise their terms in proportion to the means of the debtor. I believe that any liquidation scheme undertaken simultaneously in Khandesh and Satara would show the very reverse of what Mr. Woodward's remarks imply. I believe the Khandesh creditor would accept a larger abatement of his claim than the Satara sawkar. But without indulging in conjecture or transgressing the limits of fact, I can assert that the money-lenders in foreign territory, in the Bhor State, readily accepted less than the money-lenders in the adjoining British villages would take: and that several cases occurred in British territory affected by the Act where the money-lender refused to accept any substantial reduction of his claim.

Mr. Woodward remarks on the decrease of money transactions registered, and others have remarked on the decrease of litigation. In addition to the arguments on either side referred to in the papers before me, I would notice that the immediate effect of the Act was to stimulate the substitution of new bonds for old bonds, and that by Section 72 limitation was extended to 12 or 6 years according to the nature of the case. It naturally followed that the first year or two of the new Act led to an excessive amount of registration as compared with the years which followed, while the litigation which the old law of limitation compressed within 6 and 3 years may now be diffused over 12 and 6 years, respectively. I agree with Mr. Pollen in thinking that Mr. Woodward has underrated the extent of intercepted suits and the litigation which is disposed of by conciliators.

Finally, in criticising the Special Officer's report I cannot forbear from noticing that it throws but little light on the delay which still occurs in disposing of suits or on the costs of litigation. I cannot find whether Mr. Woodward overhauled the process-fee accounts of the various talukas. It should be remembered that before the Act passed, out of 4,650 villages in the four districts, 29 per cent. were within ten miles of their Courts, 35 per cent. were from ten to twenty miles off, 24 per cent. from twenty to thirty miles, and 12 per cent. between thirty and sixty miles. There are now 36 Subordinate Judges in the place of 24, and procedure has been much improved. Yet the average duration of suits has increased since last year, being now 4 months and 2 days. Throughout the whole Presidency the average duration of original suits in the Subordinate Judges' Courts was in 1880-81 2½ months for uncontested, and for contested suits 5⅓ months. It would have been advantageous to have learnt the cause of this delay from the pen of an independent enquirer like Mr. Woodward. Again, as regards the cost of suits I find that it averages 10½ per cent. of the value of the suit, being 12 per cent. in Ahmednagar. Twelve years ago the cost of litigation in Ahmednagar was only 13 per cent., and the difference of one per cent. is a small return for the reduction of duties and for the other facilities for justice afforded by the special Act. Paragraph 21 of Mr. Woodward's report offers a very insufficient explanation of what appears to me to be a serious defect in the administration of the Act. I notice also that little is said about the provisions of Chapter IX of the Act. Yet in my opinion the provisions for securing receipts are very important and require some practical suggestions to bring them to the notice of overworked Assistant Collectors. Mr. Woodward seems to imply that the assessments are excessive. His language is not very distinct on the subject, but what he writes tends to that conclusion. In this paper I cannot enter upon that large question, but I may at least record a dissent from the calculations of profit given by Mr. Woodward and refer for my justification to my note dated January 27th, 1883, of which a copy was sent to His Excellency the Governor. In page 14 of his report Mr. Woodward enters on very debateable ground when he suggests that a fixed rate of interest should be prescribed by law. I venture to think that such a suggestion revives an economic heresy which science and experience have both condemned. It would have been interesting if Mr. Woodward had given us statistics to show how execution is proceeding in the case of new loan transactions negotiated since the passing of the present Act. Mr. Woodward tells us that he attempted to collect certain statistics and

failed, but after all it is with new loans and the execution of decrees arising from them that we should be content. If it be true that one effect of the Act is to regulate credit and place the money-lender's trade on a sounder basis, then it would be comparatively easy and extremely instructive to follow up the history of a few of these new debt transactions. Finally, in dealing with the question of Collector's management Mr. Woodward in paragraph 19 sums up as follows: "Judgment-debtors, to whom Section 22 will be applicable, are either dishonest persons, or persons reduced to virtual insolvency." But I don't know why this should be, and I think Mr. Woodward had forgotten what he had written at the end of paragraph 10, where he writes: "Intelligent rayats have often suggested to me that even simple debts might be liquidated by giving possession of the debtor's land to the creditor for a term, during which the profits from it might be calculated by the Court as sufficient to pay off the debt" This seems to me to be the very principle underlying Section 22, and that it should meet with the approval of intelligent rayats would seem to suggest that the provision need not remain a dead letter or its application be confined to the dishonest or hopelessly insolvent peasant. The procedure adopted by Collectors under the Vatan Act, who charge alienated vatan property with an annual payment which the alienee in possession is required to pay the vatandar, seems to me only a practical illustration of the principle of management which we are so often told is unworkable in connection with the Relief Act. There is very much in Mr. Woodward's report which is interesting. His general experience of the Act is in many respects the same as I have formed. But I have ventured to call attention to certain omissions in his report, as well as to certain mistakes into which I am inclined to think he has fallen. His report is the foundation of the Chief Secretary's interesting and able note, and it cannot be a waste of time to examine the foundation.

4. *My own opinion on the Act.*—In stating the opinion which I have formed on the Act I propose to set forth the most striking facts which are contained in the papers before me, and which, being open to no contradiction, seem to me to afford conclusive evidence of the benefits conferred by Act XVII of 1879 and its two amending Acts :—

(1) Formerly the indebted classes, whose political and social importance cannot be exaggerated, had no confidence whatever in our Courts of law. *Ex-parte* decrees were passed by our Courts in 90 per cent. of the cases instituted. In 1880 *ex-parte* decisions had fallen to 12 per cent., in the following year to 6 per cent., and in 1882 to 5·2 per cent. These figures tell their own tale, and if the contested suits are analysed, there will be found still more satisfactory reason for believing that the Deccan rayat is at last learning confidence in our administration of justice.

(2) The action of the Judges is brought under strict control by inspection and revision. Under the old law the cost of appeal was ruinous and prohibitive, under the new law 4½ per cent. of the whole rural litigation and 12 per cent. of contested suits pass under revision.

(3) The Secretary of State wrote, that if agricultural loans had greatly diminished, and if the general body of agriculturists could not subsist without borrowing, then "there will have been great difficulty in realising the revenue, and a great deal of land will probably have been thrown up." Mr. Woodward tells us what I know perfectly well, that "the area of land under cultivation has greatly increased year by year since the introduction of the Act." He explains that much land remains unsown owing to the difficulty of getting bullocks. He does not tell us how many cattle died in the cattle-plague in 1881-82. But he states a fact—and there is no getting over that fact—*viz*, that cultivation has increased and not decreased, while he might have added that at the same time population has been diminished in the four districts by famine. He also tells us that "a general advance in the wages of labour has taken place," the "people are contended," and the revenue is collected without coercive processes. We are, on the other hand, warned by those who leave facts for prophecy and statistics for conjecture, that *when the next famine comes* the evil consequences of the Act will be apparent. We have not yet had famine, but two talukas of Satara have suffered from very bad seasons. They were Man and Khatav, and the history of the collection of arrears in 1881-82 is instructive. I have only space to give the figures for the latter taluka. Khatav is a taluka containing 497 square miles with a population of some 72,000, inhabiting between 80 and 90 villages of which two-thirds are Government. In 1876-77 there was

absolute failure, succeeded by a very scant harvest in the next year. In 1878-79 there were floods, and the crops which escaped them were eaten by locusts. Then followed a good year, succeeded by a bad one, which was the more unfortunate to the cultivators because the excellent harvest in the surrounding districts lowered prices. I have given the agricultural history of five years, and the total revenue demand for that period exceeded 5½ lakhs. The Mamlatdar reported that credit was destroyed by the Deccan Relief Act, and that, owing to the succession of bad seasons following the famine, the people could not pay up their arrears. But as a matter of fact, during the last two years of the period while the Relief Act was in force, the Khatav people paid up the entire revenue due for those two years and R45,000 in addition. I made enquiries into the source whence these payments had been made, and I found that the better class of tenants had borrowed, and the poorer classes had sold their produce direct, taken labour, and by one means or another raised the necessary amount. No modern famine has ever yet been borne by Zamindars or sawkars either in Bengal or in Bombay, and I have no apprehensions that the next famine will find the rayats worse off, so far as those buffers are concerned, than before. The opponents of the Act admit that the rayats' credit is improved and his material position bettered. They add that it is at the expense of the sawkar, and they conjecture that the sawkar will pay off the rayat at the next famine. But if we are really improving the rayat's position and teaching him to shift for himself, to sell his own produce, to seek for labour and to stand alone, we are assuredly preparing him in the best possible manner for a contest with famine. Those who have credit will then borrow as before, and those who have none will look to the State for labour as they did before. It is enough if the adversaries of the Act admit that the rayats are meanwhile more prosperous under its operation. Their prosperity is our best guarantee for future catastrophes, and the credit which results from such prosperity is more to be depended on than the sawkar's present temper towards them.

(4) All the reports contained in the collection before Government bear testimony to the fact that rayats have been compelled by the hard logic of facts to shift for themselves. It is little short of a revolution that the Deccan peasantry have been taught to feel their own legs, to take their own produce to the market, and to pay their revenue not out of further loans but out of the sale proceeds of their crops. I remember some few months after I received charge of Mr. Jopp's districts in Satara that I was told by the villagers of a hamlet in Koregaon that they thought the Act was injurious to their interests. I asked the cause of an experience so different from what I had found elsewhere. They said that the sawkar had refused them an advance to pay the instalment, and they had sold their produce at a disadvantage. They had in fact imprudently glutted the local market. I pointed out to them that the remedy was co-operation, and that if a few of them sold their produce and helped the rest, the others could wait for a favourable market before they repaid their debt. I believe that rural society is in this manner adapting itself to the altered conditions, that the rayats are learning to do without the sakwar, and that the villagers are co-operating. To this I ascribe the result so frequently noticed in these papers, that transactions between cultivators and cultivators in Satara are increasing. Such a result is most healthy, and the Act will have done immense good if it tends to produce such a change. A distinguished Revenue Officer in Northern India told me the other day that the best money-lenders in the country were the honest rayats who helped their fellow villagers with temporary loans.

To sum up, I believe I am justified by the evidence before me and my own experience in holding that the following results are due to the Deccan Relief Act. The mass of the rural population have greater confidence in our law Courts; they were never so contented with their position as at present; they have recovered from the effects of an unprecedented famine with unprecedented rapidity; they have increased cultivation and meet their instalments with regularity; they take their own produce to market and lean less upon the unscrupulous Shylock; they are beginning to assist each other and to combine for their mutual benefit; they can borrow, if they have credit, as easily as ever; and the margin of those with credit is steadily increasing. Against these facts we have to set the allegation that injustice is done to the

sawkar. To this I have already replied that conciliation is approved by the sawkars, and the reductions effected by the Conciliators vary from 32 per cent. in Satara to 42 in Ahmednagar; that the Courts of law administer cheaper and prompter justice, while the abatements of claims which they effect vary from 30 per cent. in Satara to 34 per cent. in Sholapur; and finally, that the opinions of Mr. Pollen and Mr. Ranade do not bear out the extreme opinion recorded in one part of his report by Mr. Woodward—that the rayats are relieved at the expense of the money-lenders. There remain Mr. West's anticipations regarding the return of famine. Mr. West may possibly be right, but present indications do not support him. Credit like water will find its own level, and if the Act increases the prosperity of the rayat, it increases his credit and consequently his power of resistance against famine.

5. *Compulsory registration*—Mr. Gonne writes (paragraph 22): "The existing system of large registration is in my opinion an unmitigated nuisance to the people." His objections are its inevitable interference with free trade involving trouble and expense, and the prevalence of some forms of fraud. He advocates the registration of all transfers of title in land, and would free money-bonds for less than R50 from compulsory registration, and Mr. West lends the force of his undoubted ability to this suggestion. Mr. Woodward, on the other hand, writes: "The security against fraud provided by registration more than compensates for such occasional inconveniences, and intelligent rayats fully appreciate and approve of registration in all cases, and are willing to pay the small expenses attending it. I must confess that my experience is precisely that of Mr. Woodward. It was one of the least-questioned provisions of the Act that registration should be compulsory. If bond below a certain sum were exempted from registration, every large loan would be distribute over the number of bonds required to bring it under the limit fixed for compulsory registration. The circumstances under which I am writing this note on boardship are so inconvenient that I can do no more than state my very decided belief that, if compulsory registration of the transactions between agriculturists and money-lenders were abolished, quite one-half of the benefit of the Act would have been destroyed. At the same time I have always thought that a "record of rights," such as is kept in the North-Western Provinces, ought to be kept in Bombay, but I do not think it would supersede the necessity of maintaining the existing law regarding registration.

6. *Conciliation.*—The Chief Secretary does not apparently wish to abolish Conciliators altogether, though he is sensible of the trouble and delay involved in the system; but he would make it voluntary, and he would not make the regular Judges act in the capacity of friendly arbitrators. A scrutiny of the three last reports by Mr. Pollen shows that, if conciliation has not done everything, it has intercepted a vast amount of litigation. It would do still more if Mr. Hunter's ill-judged opposition to the proposals of the Bombay Government had not shown the Conciliators of their power to summon parties before them. I have good reason to believe that in very many cases the notices of the Conciliators do not reach parties. As an alteration of the law is out of the question, other remedies must be devised. It may seem a small matter, but after all the soundest principle will be inoperative without proper administrative machinery. I believe that if each Conciliator was provided with a notice server, it would much increase the utility of conciliation. At any rate it might be tried as an experiment, and the messenger could be discharged if his services did not lead to an increase in the number of intercepted suits. I am certainly not in favour of optional conciliation until greater experience has been gained. As regards Mr. Gonne's objections to the combination of the functions of Conciliator and Judge, he is doubtless aware that it is the French system. The *Juges de paix* have jurisdiction to try the more petty of the cases in which they are Conciliators. The powers of conciliation are of course far larger than their powers of jurisdiction, but within a limited sphere they are both Conciliators and Judges in the same case. The best Conciliators I have met were a Subordinate Judge at Rahimatpur and one at Sasvad. In Wái a lavad patra or Conciliation Court was at one time established by the people themselves, and I think the principle of intercepting litigation is one which is appreciated by the people. For the present at least, I would be inclined to extend rather than to contract the system.

7. *Liquidation of claims.*—There seems to be an impression that something more is required than the present Act for the relief of the Deccan peasantry, and Mr. Gonne, as well as Mr. Woodward, seems to think that "a general liquidation of the debts of cultivators by Government is the great desideratum." Mr. Gonne in his carefully elaborated and thoughtful remarks on this question makes no allusion to the discussions which took place in the Revenue

Department in 1875. I cannot now analyse those discussions, but they are contained in a letter from Mr. Richey to Mr. Pedder, dated August 30th, 1875, a Secretariat note by Mr. Pedder of August 31st, Mr. Richey's letter of September 15th, 1875, and minutes by the Government of that day thereon, ending with one by His Excellency Sir P. E. Wodehouse, dated October 19th, 1875. If any serious steps are taken in the matter, the correspondence referred to will be found very useful if read with the valuable suggestions of Mr. Gonne. A scheme of liquidation is very fascinating, and if the Deccan Relief Act had been introduced simultaneously with such a measure, perhaps great results might have followed. But I don't believe that it is at all practicable, and if practicable, the risk of loss is very great. As admitted by Mr. Pedder, two classes of debtors would not come under the scheme, those who can settle their own affairs, and those who are so hopelessly indebted that they cannot be saved anyhow. For the intermediate class the State would have to advance money and the Legislature to enact exceptional legislation. If these preliminary fiscal and legislative difficulties were overcome, recurring famine, the universal heritage of the Deccan rayat, would either interrupt the work of liquidation, or, if it did not do that, would throw down the Settlement Officer's work as ruthlessly as the tide of the sea upsets heaps of sand. I venture to think that in discussing the economic condition of the Deccan, famine is the first consideration, famine the second, and famine the third. Do what we will to prevent it, population will increase, until famine throws it back again, faster than production. The recurrence of famine is certain and a bad famine places all labour under interdict, destroys capital invested in stock and ornaments, and ruins all but the most prosperous few. Under such conditions commerce cannot thrive. A famine-swept tract is not the field for Agricultural Banks or for a general system of liquidation advances which must be punctually repaid. It is a field for the execution of irrigational and public works in ordinary times and for gratuitous relief and labour works in time of famine. It may be a field for the cautious extension of Tagai. All other investments are full of risk. What is the use of paying off debts once and for all if the redeemed rayat is to be plunged into debt again at the end? His redemption is not to be effected by a single exceptional *tour de force*, but by patient acquisition of thrift and by the laws of experience, which "appoint that suffering master to fully teach." I venture to think that a liquidation scheme is condemned by financial considerations, would be upset by the first recurrence of famine, and finally would afford a bad precedent. Such a measure would stand on the same footing as the proposal to apply the revenues of England to the purchase of land in Ireland for the conversion of Irish cottiers into peasantry. It would inevitably in the long run prove a tax on the more prudent members of society to help the imprudent. At present the Deccan rayat does not expect it, and I would not put the notion into his head.

8. *Government advances.*—On the other hand, I believe that Government advances for agricultural inprovements, and for the redemption of land in the cases of thrifty solvent rayats are perfectly legitimate and capable of larger extension. When I took charge of my districts in Satara I found several applications for Tagai which had been awaiting disposal for several months. I rode to the village of the first application I took up, and found the work in progress. The applicant had been compelled to go to the sawkar. The moment I began to advertise such advances a few applications were received. I granted one man his advance and sent him with an order to the Mamlatdar of Wai. Three days later I visited Wai and found the applicant still waiting outside the Kacheri for his money. The Mamlatdar had refused to pay on my order and had referred it to the Collector. I could give a dozen more instances of delay to show why advances are not taken up. In this place I should not be justified in going deeply into the subject. But I believe that prompt disposal of such applications, standard forms of application kept by each kulkarni, rules to enforce the immediate payment of an order granted upon a taluka treasury, and above all things, the personal interest of the Assistant Collector would remove all difficulties. It would be necessary to see that the provision of funds did not lapse at the end of the financial year without fresh provision being made immediately available. The hot-weather months are the very months in which most use can be made of advances, and it has often happened that no fresh provision has been sanctioned until June, when the monsoon stops work. I have recommended before now, what Mr. Woodward proposes, namely, that advances should be granted for the redemption of land as well as for agricultural purposes. With this extension of the system and the adoption of Mr. Gonne's suggestion of joint village responsibility, I believe that Tagai would meet most of the difficulties which it is proposed to overcome by the *deus ex machina* expedient of a grand liquidation scheme. But the experience of Mr. Crosthwaite's rules introduced by the Board of Revenue in the North-Western Provinces in 1876 seems to prove

that advances for the liquidation of estates are only useful in the case of the fairly well-to do proprietors, and not in the case of those verging on insolvency. In fact in the case of the middle class of tenants, whom Mr. Pedder proposed to help, advances for liquidation of debt should alone be sanctioned. I expect that vatan feuds would in many villages prevent the co-operation required by Mr. Gonne's union scheme. But I should very much like to see it tried in connection with Tagai. There is very much in it which deserves a fair trial, and the conditions under which Tagai advances are given seem to me specially favourable to the experimental scheme sketched by the Chief Secretary.

9. *Agricultural Banks.*—A fundamental difference exists between business and charity, between commercial enterprise and famine relief. I have always thought that Sir William Wedderburn overlooked this essential starting point in the consideration of agricultural banks. Sometimes he appeals to the noble work of helping the prostrate rayat and of relieving him from the shock of famine, and at others he confines his arguments to the field his banks would offer for investment. To me it seems dangerous in the extreme to appeal to capitalists for help and satisfy one's benevolence that, if the business does not pay good dividends, it will relieve distress. It would be disastrous to a form of business, which is capable of doing good work not merely for the people of India but for shareholders, to float agricultural banks by cork jackets. The State has no right to spend the taxpayer's money in bolstering up a speculation which cannot pay. It is only misleading the money market to invite capital to undertake a business which is obviously unsound. The inevitable crash will come, and it will discredit not merely the single undertaking that fails but all similar undertakings which in a better field for enterprise would have succeeded. Can any one pretend that agricultural banks would succeed in a famine-stricken tract where scarcity recurs once in every 11 years and severe famine appears once in every 50 years? There are plenty of signs which indicate that the Deccan is not the best field for the introduction of agricultural banks. The Poona Society have already stipulated for cork jackets to float their enterprise. They first asked for a State guarantee which every one agrees is out of the question. They now ask for an assurance that revisions of assessment, which the State has a right to claim as its share of the unearned increment of rent, should be suspended. If their prayer were granted, it would be ultimately fatal to the rayat's rights. Inflated credit would lead the peasantry to borrow. The State-assisted bank would seem to be their friend. Land would become a profitable investment. The Poona capitalists would get a whole village into debt, foreclose mortgages, and zamindars would take the place of the peasant proprietary. The Maratha rayat would not acquiesce tamely in the position of the Behar tenant-at-will, and the State would realise in the midst of agrarian disturbances that it had prepared the fatal decline down which a loyal peasantry had sunk into rack-rented and disloyal tenants-at-will. I believe that an agricultural bank would not pay in the Deccan without State aid, and I think that such aid is a form of socialism which is economically unsound. But if the experiment is to be tried on a small scale in one taluka, I am inclined to disagree with Mr. Gonne in granting to the bank the right to recover its regular advances and instalments of interest as arrears of land revenue. The utmost which I would concede would be the right to recover decrees through the agency of the Collector. I would not allow the Collector to become the bank's agent for collecting instalments or arrears of interest. Government must recognise the necessary limitations on its own powers. The Assistant Collectors have got neither the time nor the establishment necessary for the collection of the bank's debts. It is no part of the functions of Government to become land agents for private companies. I do not think that any form of joint village responsibility for widespread or continuous advances could be systematically introduced into the Deccan. Under a malguzari system such a scheme could be worked, but not under a rayatwari system. All that I could concede to an agricultural bank would be the following privileges :—

I.—The remission of part of stamp duties on bonds.

II.—The remission of part of the Court-fees on suits for recovery of loans or interest.

III.—The execution through the Collector of *decrees* for the recovery of advances.

IV.—The assistance of the Collector in examining titles and in ascertaining incumbrances.

V.—Legislation to place the borrowing powers of a bank's debtor under disabilities.

VI.—The creation of a Revenue Court with summary jurisdiction in loan suits, on the analogy of Small Cause Courts.

For these privileges the bank should be compelled to keep within a fixed maximum of interest and to allow its books to be open to official inspection. On no account would I place a

Government officer on the Board of Direction or accept any responsibility for the solvency of the bank, nor would I arm it with any preferential rights against other creditors.

10. *General view of affairs in the Deccan.*—I have necessarily omitted notice of many matters of importance. Under present circumstances it is impossible to do more than offer a few opinions on the most salient features of the correspondence. If I have advanced any opinions without sufficiently defending them, I am prepared to justify them at greater, length, but my paper has, I fear, become too long already. The Secretary of State's Despatch of January 26th, 1882, observed that if the Act were doing mischief it would be better to remedy it at once. I am strongly of opinion that the Act is doing good, and although there are matters in which its provisions might be modified with advantage, I believe that the wisest and most statesmanlike policy will be to improve its administration, and neither to alter it nor to supplement it by any of the schemes proposed. The present position of parties in the Deccan is accurately described by Mr. Woodward. The masses of the rural population, the borrowers, are contented and accumulating. The creditors, on the other hand, believe that "the relief measures are merely experimental and doomed to ultimate failure," and they will spare no agitation to get the drag upon their nefarious practices removed. They have witnessed the constant oscillations of Indian policy, ever shifting with each new incumbent of high office. Opinions will always differ on difficult economic questions, and the opposition to the Relief Act will at all times number in its ranks men of great ability. But the land wants rest. Society in rural Bombay is now reconstructing itself upon the basis of the new law. A great social revolution is peacefully working itself out, the rayats are striving to shake off the constant intervention of the money-lender, they take their own produce to market, they are beginning to help each other, while the money-lenders are holding aloof to watch events. Let the latter be assured that the State is content to give the new Act a fair trial, and they will soon accommodate themselves to it. There is no proof that they cannot obtain justice: there is no proof that they have absolutely ceased to lend. The conditions of their business are undoubtedly altered, but a sound business still remains for them. The Act has only been in force four years, and at least ten years are required to give it a fair trial. In the Austrian Crown Duchies (Galacia, Cracow and the Bukowvina) somewhat similar experiments are being tried, and the tendency is to go forward in the same direction. Nothing in my opinion would be more disastrous than to retrace our steps in India, until we have positive proof of the failure of the Relief Act. Mr. West can allege nothing against it except that its principle was scientifically unsound and that he conjectures that the strain of the first famine will be its ruin. But the Legislature of 1879 considered fully the scientific arguments, and I for one cannot share Mr. West's conjectures as to the future. Mr. West, watching events from a distance, may be a better judge of the game than myself, who have studied it in Satara as far as my opportunities allowed me. But conjecture is an unstable basis for action. Meanwhile we have an interested and powerful agitation on the part of the sawkars to contend against. But the Government in answering the Secretary of State are not likely with the evidence before them to support the four objections made by Mr. West, and if these objections cannot be clearly substantiated, the arguments in favour of giving the law a full trial are unanswerable. I therefore venture to hope that rural society, which as regards the money-lenders is "in a state of ferment," and as regards debtors in a state of contentment, will be left absolutely to accommodate itself to the altered conditions of the law. There is plenty of room for improved administration. The costs of litigation are still too high, the duration of suits too protracted, and the selection of Conciliators, Munsiffs and Registrars not wholly satisfactory. But in my opinion the law should be left as it is and no fresh experiments be made for the present. The mere thought of change leads to unsettlement, false rumours and exaggerated expectations, all of which are fatal to that natural and quiet development of rural society which is more essential to order and progress in India than in any other country.

ON BOARD S. S. "AUSTRALIA";
The 4th October 1883.

W. LEE-WARNER,
First Assistant Collector.

Extract from a letter from Mr. C. H. JOPP, C.S., dated 26th August 1883.

The last few years have placed it beyond doubt that the rayats are able to maintain their status as landholders without the aid of the savkars in good years. That they can do so in times of partial failure, or when, though there has been a complete failure in a limited area, the crops in other parts are good is also certain. The fact is that besides the lowest class who

habitually go out to seek work, many members of the middle class families do so occasionally, though they may be too proud to confess it.* Going out to seek work is therefore no new thing to the rayats of the lower and middle classes, and at a pinch so far are they from being too proud that experience shows that in bad times they will take to labour *en masse*. Experience shows also that poverty does not prevent them transporting themselves to places where work is to be found. The Railway passes through three out of the four districts, but most of the travelling is done by road.

* I enclose an extract from paragraph XI of the Administration Report of the Second Assistant Collector, Poona, for 1882-83 written by me bearing on the matter.

I have not been making these assertions at random. In Purandhar last season in some villages more than half of the crop of the year was ruined, and yet the poorer rayats were able to pay the Government demands out of the wages of labour on the public works or in the fields of more fortunate villages without the aid of the money-lenders. Further there has not been a good season in Kopargaon Taluka since 1875, yet the rayats have been able not only to support themselves but to resume cultivation each year, because they found plenty of employment on good wages on agriculture in Khandesh, in Bombay, on the public works or elsewhere. Poverty did not prevent this yearly exodus which included all classes of rayats except the "upper ten." If six or seven years of bad crops could not make the rayat too poor to transport himself in search of work, it is difficult to see what could. In 1881-82, I am told, almost the entire population of the táluka left for work. In the past season three-fourths of the whole crop were destroyed by locusts. The result, how many villages were almost entirely deserted, is described by Mr. Woodward, but so far have the rayats been from being obliged to sell their houses or their fields, as Mr. West supposes, that having obtained ample employment they have returned, the whole taluka is now under cultivation, and if the season is a good one there will be a rapid recovery of prosperity.

Of course remissions and postponements have been granted largely, but these would have been given by the worst of rack-renting landlords, and the question, as I understand it, is whether, as Mr. Woodward puts it, the population will be thrown on Government for support, if loans fail them in times of difficulty. There cannot be a stronger demonstration I think of the contrary than the example of Kopargaon, and I believe that we may conclude that the rayats are able to maintain their position as land-owners without the aid of loans, however bad the crops may be in any limited area, provided that the demand for labour is good.

Should it ever happen, as occurred in 1871,† that while there was a serious failure of the crops, trade was slack, and the expenditure on public works had been practically stopped, Government would have to step in and support the Koolee rayats as the Sawkar did in 1871. There would then occur all at once a bad season, high prices, and little or no demand for labour. Neither a bad season by itself, provided it did not amount to a famine, nor a bad state of the labour market by itself would be sufficient to produce the calamity Mr. Woodward describes, though it would cause much distress. Bad seasons of course cause high prices, though the prices material to the question are not those where the crops are bad, but where the labour is found. They affect the demand for labour in agriculture directly, but the demand for labour in towns or on the public works they do not affect at all. If the influx of labourers into the towns was much greater than the demand, wages would seriously fall, but this would only happen when the scarcity amounted to a famine.

† *Vide* paragraph 68 of the Report of the Deccan Riots Commission.

Writing as Revenue Officer I believe that granting tagai to rayats on a large scale would be equivalent to making them a present of the money. The difficulties in realising advance would be too great. So too till the promoters of the Agricultural Bank can show how they will discover whether any applicant is the sole owner of the piece of ground on which he asks for the advance, and not only one of the sharers in it, without the aid of the Mamlatdar, the scheme is difficult to criticise. The plan mentioned in paragraph 38 deserves a trial, especially as the idea, that the whole village collectively was responsible for its debts, was that on which the land revenue was collected by the Maratha Government. But besides the objection mentioned in paragraph 39, will there not be some difficulty in finding three people of sufficient intelligence in a village to conduct the enquiry and make the report described in paragraph 38 (7)? Is there not also the danger that the Panch will be made up of the money-lenders, often also rayats, of the village who are usually the people of greatest intelligence in it?

The only result which I believe these schemes will have is that sooner or later some modification of the European banking system will be found suitable to the habits of the

inhabitants of the Deccan. Might I suggest a plan such as the following? Government might advance money to a Company of the more respectable money-lenders in a taluka at 6¼ per cent. on the security of land, which most sawkárs hold, on condition that a nominee of Government should have a share in the management. The nominee might be paid out of the difference between the 4 per cent. and the 6¼ per cent. The books of the Company should be open to audit, and the privileges recommended in your paragraph 41 might be given to the Company. No restrictions as to the rate of interest, which I believe it is impossible to regulate, or otherwise, should be placed on the business of the Company which should be left to develop itself naturally. The advantages to be expected from this scheme are that, without any possibility of loss to Government, there would be in the taluka a Bank, the business of which would be conducted honestly and respectably, and whose example would tend to raise the standard of the business transactions of other money-lenders. It would also always be open to any solvent rayat to borrow from the Bank when he would be sure of not being cheated, instead of from the frequently fraudulent village money-lender, and lastly this scheme, if practicable, might solve the question as to how far, and in what form, banking corporations in the European sense are possible in the Deccan.

That the Act as it stands is iniquitous towards the sawkar cannot be doubted. In my letter I was discussing the question from the rayat's point of view.

CHARLES HENRY JOPP.

Extract from Mr. JOPP'S *Administration Report* (*Poona District*) *for 1882-83.*

All classes of agiculturists have participated in this general prosperity. The question which has been so often debated, whether the rayats are able to live on the produce of their holding or not, is answered by saying that all those who have bagait land can do so. As wet crop land is in a great measure independent of the rainfall, it is worth the owner's while to lay out his small capital on farming as highly as he can, and he and his family derive their support from the crop, the outturn from any jirait land he may possess being merely a supplementary source of income. The members of the family seldom if ever leave the village in search of work and ample employment is found for them and the stock of the farm on the arm itself. The number of holdings of this kind is much larger than is usually supposed. Of the 4,986 khatas in 55 villages of taluka Sirur no less than 1,312 are of this description. The owners, if thrifty, are able even in ordinary years to accumulate capital, and when, as in the past season, a part of the Government demand on an excellent crop has been returned to the rayats, their profit must have been very great. Nor is the condition of owners of purely jirait holdings less satisfactory. This class of cultivators live only partly by tilling their land, not because as a rule the area of the holding is too small, or the assessment too heavy to allow the family of the owner to live on the outturn of the farm, but because it is not worth the Khatedars' while to cultivate the land properly. In Indapur, where land is not ploughed more often than once in six years, want of cattle has much to do with this bad cultivation, but this is not the case in other places. In Purandhar, for instance, where the number of bullocks is ample, ploughing takes place only once in three years, and in no part of the charge is jirait land manured. The owners will admit, if questioned, that their land if properly tilled would yield an outturn much greater than it does now; but as long as the rainfall is uncertain it is not worth their while to spend much money on their holdings. If the land were highly farmed and no rain fell, the loss would be great, while under the present system the rayat can lose but little and may profit largely on the small sum he lays out. He can always make good any deficit in his income by leaving the village with his family in search of work or by sending out his cart for hire during the idle season. In this way he earns sufficient to pay the assessment of the land and to clothe his family and even make small savings, the grain of his crop being kept for food. As the jirait crops were excellent and the demand for labour good during the past year, it follows that the condition of this class of rayats has much improved. But the increase in prosperity has not been as great comparatively among them as among the class which lives entirely by labour. Wages were high, grain was cheap, and employment could be easily obtained on the public works or in Bombay. A family living by labour could even put by money at the end of the year, and instances have occurred in which a labourer has refused to become a tenant by taking the piece of land on which he worked on a "Wata." It is no exaggeration to say that at present the condition of this class is better than that of the class of poor land-owners. It is only the greater respectability attaching to the ownership of land and the possibility of a rise in prices

or a fall in the demand for labour that prevent many of the rayats throwing up their holdings and taking to labour as a profession.

Memorandum by Mr. C. H. Jopp, Acting 1st Assistant Collector, Ahmednagar, dated the 18th November 1883. No.

The Chief Secretary has asked me to explain the opinion which Mr. Woodward attributes to me in paragraph 4 of his report on the working of the Deccan Agriculturists' Relief Act. This opinion was to the effect that if the almost unanimous belief of the rayats was to be trusted, the Act had done them more harm than good, and that it was not likely to have any beneficial result, besides teaching them thrift and proving that they could do without the sawkars. Since this was written, now more than a year ago, I have been making very careful inquiries into the working of the Relief Act, and I have modified my opinion so far that I am willing to admit that very different opinions relative to it are held by the rayats, according as they have been benefited or harmed by its provisions. But I still believe that the law has done more harm than good, and as I have served, since the Act was introduced, in three out of the four districts in which it is in force, and have had opportunities for forming an opinion possessed by no Revenue Officer except Mr. Woodward, it may be useful if I explain why I differ from the conclusions arrived at by Mr. Woodward, and Mr. Lee-Warner, and in what respects I think the Act should be amended.

2. Mr. Woodward's conclusions are as follows:—The Act has benefited the rayats morally. It has taught them thrift, prudence, and saving, and has released them from their slavish relation towards their creditors. It has also benefited them materially, by practically annulling all money debts, by securing their property from attachment and sale, and by allowing them to pay off their old debts according to their means, and by discouraging new ones. It has thus enabled them to reap the entire fruit of three years of prosperity. But these benefits, besides being enjoyed chiefly at the expense of the money-lenders, have been experienced in full only by that class, the more intelligent and prosperous cultivators, for whose aid the Act was not passed, while the poorer and more ignorant, for whose succour the law was intended, have been benefited in inverse ratio to their poverty and their need for the succour of the law. Further, should wages fall and the seasons be bad, Government will have to support from 50 to 60 per cent. of the rayats from one crop to another. Mr. Lee-Warner accepts these conclusions in the main differing from them on one or two points.

3. Now it is clear that if Mr. Woodward's account is a true one, the Act must be condemned, as its object was to benefit the poor and not the rich rayat. But a little thought shows that the evils of the law are not as great as he makes out. The provisions relating to the judicial inquiry into the history of debts, the redemption of mortgaged lands, the management of land by the Collector, and the sale of land only when specifically mortgaged, have benefited the richer rayats scarcely at all, partly because they as a rule owe little, and partly because they almost always own moveable property by the sale of which their money debts could be realised. Their credit indeed has to a certain extent been affected, for they can now borrow only under very stringent conditions, and though they may have thus been benefited in purse, they are just the class who could improve least in habits of thrift and saving, for these are the very habits which made them and kept them prosperous. Lastly, a very considerable number of them are small money-lenders and have suffered in common with other sawkars. On the other land, the poorer cultivators possess little besides their land, their stock, and their houses, all of which are now practically out of reach of their creditors, and the whole of the enormous mass of unsecured debt under which they were labouring before 1879 has been wiped out. They are now enabled to pay at their convenience such debts as the law still compels them to pay, and it is practically impossible for them to incur fresh ones. They are forced to live within their means, and many of them are being educated in thrift and saving. Of course the more intelligent rayat is more likely to have improved morally, but the whole class of the poorer cultivators has shared in the benefits of the repudiation of their unsecured debts. In short the reverse of Mr. Woodward's conclusion is true. The poorer class of rayats has benefited more largely than the richer.

4. A very large proportion of the population might, no doubt, under certain conditions, be thrown on Government for support, but such an occurrence is very unlikely. I have already, in a demi-official letter to Mr. Gonne, given my reasons for thinking that such a calamity could ensue on a failure of crops in a limited area, only when there was also a rise in prices and a collapse of the labour market within a reasonable distance of the area affected. I need not repeat these reasons now. The utmost that can be said against the Act in this respect is, that it makes a famine one degree more probable in a district in which it is in force than in Nasik or Khandesh.

5. Mr. Woodward has omitted or at least he has not stated explicitly one of the benefits which the Act has undoubtedly conferred. I mean the growth of intelligence in business. But after every allowance has been made in favour of the Act, there are one or two considerations sufficient to condemn it. In the first place "it teaches an indebted proletariat the fatal doctrine of *tabulæ novæ.*" Mr. Lee-Warner does not even attempt to refute this objection which appeared conclusive to him in 1879. Next to money-lending, shopkeeping and agriculture are the only trades in which an inhabitant of the Deccan can use his savings with profit. The number of shops and the capital which can be employed in them are necessarily limited. Much attention has not hitherto been devoted to farming highly, and in consequence persons of all castes and conditions, shopkeepers and cultivators, Brahmans and Mhangs, in fact every one who has saved a little money, are found in the class of money-lenders. The Relief Act in placing restrictions on the Marwari or Brahman has dealt a blow at the capital of the thrifty shopkeeper or cultivator. Nay more, it has to some extent tended to discourage saving. As money-lending is no longer profitable, those who have farms spend their money on improvements. This is an unmixed good, but the law prevents those who have saved money and have no land from lending to land-owners who have not saved but who wish to improve their holdings. It has deprived all but land-owners of any profitable form of investment, and I am informed that much money has been turned into jewellery. I now come to the most serious charge against the Act. The relief which it has afforded has been given to a great extent at the expense of the money-lenders. This is Mr. Woodward's conclusion from which Mr. Lee-Warner dissents. Mr. Lee-Warner writes, "so far as my experience goes, I cannot believe that the trade of respectable money-lenders has been seriously injured, much less destroyed by the Act." I do not pretend to divine what the reasons are which led Mr. Lee-Warner to form his conclusions, but I am quite prepared to accept them as far as Satara, the only district of which Mr. Lee-Warner has any experience, is concerned. Mr. Lee-Warner's talukas are nearly if not quite the most prosperous in the Deccan. They did not suffer in the famine, they have had good crops ever since, they are blessed with light assessments, and there was no good reason why the Act should have been applied to them at all. The richer rayats form a much larger proportion of the total number in them, than elsewhere, and these are just the class whose relations with the sawkars have not been very seriously affected by the Act. For this reason I can well believe that the sawkars have retained a much larger proportion of their clientéle and their business than elsewhere. But if Mr Lee-Warner means to infer from his observations made during two or three months in a few villages in Purandhar, a taluka only little less prosperous than Wai or Koregaon, that a similar state of things is prevalent in the Poona district, I may be pardoned if I think that he is arguing from insufficient data. The effects of the Act, as Mr. Woodward says, vary very much from taluka to taluka, but they can only be properly appreciated in those places in which the poverty and distress are greatest. As far as my experience goes, a similar phenomenon is observable in the forest districts of Poona and Ahmednagar, though it is more evident in Kopargaon where the money-lenders for the most part survived the famine, than in Indapur where only the richest remained after 1876. The profits of all money-lenders alike have been seriously affected, and the middlemen and smaller sawkars have been ruined. Survival has been determined not by respectability or any other moral quality but simply by length of purse. The license-tax receipts quoted by Mr. Woodward show clearly the effect on the sawkar's profits. To meet Mr. Lee-Warner's objection that the decrease is due to reduction of taxation in 1880 the full effect of which was not felt till 1881, I give the figures for the whole of the Ahmednagar district up to date—

1880-81.	1881-82.	1882-83.
R	R	R
40,301*	35,550*	31,235*

It must be borne in mind that the decrease of R4,000 in 1882-83 is due entirely to the declining profits of the sawkar's business. The profits of shopkeeping are in no way affected by the Act. This result has been caused in the first place by the repudiation, which the law permits, by the poorer rayats of the whole of their unsecured debts. But, it will be said, these debts had been swollen by usurious interest, and all that was equitably due on them had been paid. In the first place this statement is too sweeping. Money was equitably due, certainly on all advances recent in 1879, and probably on many others of earlier date. Next I must observe that even if much of the business done was usurious, the Act by rendering loans to the poorer rayats impossible for the future, has destroyed a chief source of the sawkar's income. Another cause has been in the delays and difficulties in the execution of decrees

* These figures represent the net amount after appeals were decided. Mr. Woodward's figures probably represent the sums assessed.

which have rendered money lent on simple mortgage practically irrecoverable, while the interests of mortgagees with possession appear to have suffered, though in a less degree, in redemption suits. In short the Act has relieved the rayats at the expense of the money-lender entirely in the case of unsecured advances, partially in mortgages without possession, and in some degree in redemption suits. I have dwelt on this point at some length, not because I think there is any doubt about the matter, but because I agree with Mr. Lee-Warner that if the Act has relieved the rayats at the expense of the money-lenders it stands condemned.

6. It is quite possible to hold the opinion, that though the Act has been harmful hitherto, it is the best policy to leave it unchanged. The repudiation by Act of the Legislature of the money debts of the poorer rayats is now practically complete, as very many of the bonds are time-barred, and it may reasonably be asked, if the rayats are growing in prosperity and thrift, what reason is there for interfering with the law? To this I reply: "Rural society would," no doubt, "in time accommodate itself to the provisions of the law." After a succession of good seasons the majority of the rayats would become in a position to borrow and be desirable as debtors. New capitalists would arise in the place of the ruined ones, and as no law has ever yet succeeded in preventing loans, some method of lending more freely to the rayats, perhaps the credit transactions mentioned by Mr. Woodward, would be adopted. The majority of the cultivators, richer indeed and more intelligent than before the passing of the Act, would then have to pay in every transaction for the extra risk caused by the restrictive provisions of the law, in order that a minority whom neither legal enactment nor a succession of good seasons could teach thrift, or prudence might be maintained on their farms. Next the difficulties in the way of recovering debts actually declared due by the Courts, which Mr. Woodward so graphically describes in paragraphs 10 and 19 of his report, will remain. Many of the richer rayats may be expected to turn money-lenders, and they as well as the Marvari will find themselves hampered and injured by the law. It would not be surprising if not only the general public but also the well-to-do rayat should come to think that the provisions of the law were somewhat one-sided. Further, the Relief Act will continue to fetter the transfer of land. Land is seldom if ever willingly sold in the Deccan. He who wishes to get possession of a field must be content to acquire it by the slow process of lending money to its owner, first on his personal security, next on simple mortgage, and lastly on mortgage with possession. The Relief Act has rendered the first two stages dangerous to the creditor and has so far placed obstacles in the way of such transfers. Now, it is obviously the rayat's interest that the Marvari, who will always be with him, should regard himself not as a foreigner, but as one of the cultivating population, and that he should be controlled by local opinions and influences. Among the peasant-proprietors of Germany money-lending is entirely in the hands of the Jews who, when they get possession of field, instead of farming it, chop it up into bits which they sell by auction. In consequence the sub-division of land is always going on, and so great is the evil that the Bavarian, the Wurtenburg and the Prusian Governments have had to legislate against it The Deccan has hitherto escaped this "farm butchery," because the Marvaris and Gujars have, to some extent, taken to owning and farming land. The acquisition of land by them, provided it does not occur too largely,—and of this there is no evidence even in Ahmednagar,—is an unmixed good. It is one of the objections to the maintenance of the Relief Act as it is that it places obstacles in the way of this acquisition and so tends to make the Marvaris and Gujars a caste apart from the rayats. Its provisions fetter equally the transfer between agriculturists. Some will object that the registration returns show that sales and mortgages by cultivator to cultivator are now of frequent occurrence. But this argument, *post hoc propter hoc*, is disproved by the fact that mortgages and sales occurred between Kunbis before 1879. I have found such transactions registered in Purandhar before 1874, and that redemption suits brought by agriculturists against agriculturists are very numerous in Satara, shows that they were common in the most prosperous of the four districts before the passing of the Relief Act. The number of such transactions is, I believe, an index of the prosperity of the rayat at any time or place. That so many occur now is due to the excellent crops of the last few years, and in no way to the Relief Act, the provisions of which are purely restrictive. It is probable that the number would have been greater if the Act had not been passed.

7. The preceding considerations are sufficient to indicate the points on which the Act and the procedure under it need amendment. These points are:—

(1) Some alteration in the procedure of the Collector when acting under section 22 of the Relief Act, or under sections 320, 321, 322, and 323 of the Civil Procedure Code, so as to enable the debts declared due to be realised by the management of the debtor's land.

(2) The removal, from section 22 of the Relief Act, of the clause requiring that land sufficient for the support of the debtor and his family should be reserved.

(3) The abrogation of that part of section 22 which forbids the sale of land except when specifically mortgaged.

The causes of the failure of the management of land by the Collector under sections 320 to 323 of the Civil Procedure Code are in (1) the delays due to overwork in the Collector's and Mamlatdar's offices, (2) the delays due to one or other of the parties failing to put in an appearance before the Mamlatdar, (3) the fact that no final order is ever made as to the management of the land without the consent of the creditor. The first difficulty can be avoided by distributing the work among the Assistant Collectors, or by appointing a Special Officer. The second can be met by deciding the references *ex-parte* and refusing adjournments except for sickness or other good cause; while the third difficulty can be obviated by the Collectors making a final order, whenever he can, for the payment by instalments, or the renting of the land whether the creditor consents or not. At present the creditor in mortgage cases often from the first intends to get possession of the land. He refuses to consent to payment by instalments, or to take the land on a term instead of principal and interest, and the sale of the land sooner or later takes place, the creditor being the purchaser. I do not know why the consent of the creditor is indispensible; but if the law requires it, the provisions should be altered so as to allow the Collector (if he fails to find a tenant for the land and if the creditor refuses to accept payment by instalments, or to take the land himself for a term), to assess, on the analogy of the Vatan Act, with or without the consent of the creditor, the profits of the debtor's land and to order this sum to be added to the assessment, to be levied yearly with it and to be paid to the creditor. On default by the debtor, the amount could be realised as an arrear of land revenue by the sale of the debtor's moveable property, while as a last resource the land could be paid in payment of the debt. The creditor would then have a reasonable certainty of recovering his money, while sales of land in mortgage cases would be much less common than they are now.

8. This procedure might with advantage be adopted in the management by the Collector under Section 22 of the Relief Act, but much difficulty would still be found in the realisation of money debts if the section remained as it is. For the poorer rayats, who as a rule, alone now come into Court, do not generally possess land more than sufficient for the support of their families and the surplus land, if any, would probably be not enough under the Collector's management to pay the debt. If it is desired to give the creditor a fair chance of recovering his unsecured advances that part of Section 22 which requires that land sufficient for the support of the debtor and his family should be reserved, must be omitted. The Collector would then be able to adopt the procedure described with a fair prospect of success, as he would have the whole of the debtor's holding to deal with, and the clause preventing the sale of land except when specifically mortgaged which has so injurious an effect on the rayat's credit, might be abrogated, without there being any great danger of sales of land being numerous. But, it may be said, if the rayat was ousted from the land, he would be deprived of all means of subsistence. In the first place the day-labourer, as wages are at present, is better off than the poorer rayat. Next the owner could easily get a vata in a neighbour's field, and, lastly, it would only be when the land was let to a stranger, and this very seldom happens, that the owner would be ousted from the field. The creditor, if possession was given him, would be pretty certain to leave the owner to cultivate the field on a "vata." Another probable objection is, that these are the very clauses which were enacted to protect the rayat. But the rayat would be far from being left without protection. The judicial inquiry into the history of debts secures him at any rate from demands not justly due. The management by the Collector could, I believe, if the law was amended, be so carried on as to secure the rayat in the eventual possession of his land, while if it is intended in future to avoid the mockery of declaring by course of law debts to be due which the law itself renders irrecoverable, some alteration in the direction mentioned would seem inevitable.

C. H. JOPP,

18th November 1883. *Acting 1st Assistant Collector, Ahmednagar.*

From C. GONNE, Esq., Chief Secretary to the Government of Bombay, to E. P. ROBERTSON, Esq., J. G. MOORE, Esq., A. D. POLLEN Esq., J. R. NAYLOR, Esq., H. WOODWARD, Esq., MAHADEO GOVIND RANADE, Esq., CHINTAMANRAO VISHVANATH NATU, Esq., GOVIND MAHADEV GADRE, Esq.,—No. 5842, dated Bombay Castle, the 24th August 1883.

In forwarding to you the accompanying copy of a memorandum* on the subject of the working of the Deccan Agriculturists' Relief Act, I am directed by the Governor in Council to request that you will be good enough to form yourselves into a Committee presided over

* Printed on page 404.

by Mr. E. P. Robertson, the Commissioner of the Central Division, for the purpose of discussing the suggestions contained in the paragraphs against which the letters A to F have been placed. It is desired that your opinions should be recorded in a report of the whole Committee so far as unanimity may prevail, and that otherwise they should be given separately but after full discussion.

2. I am further to state that the Governor in Council does not think it necessary or expedient that any evidence should be taken, as members of the Committee will be able to supply the best available information on the working of the Relief Act, and it is hoped that your report will be received within a month from the present date.

REPORT.

1. This Committee was appointed under Government letter No. 5842, dated 24th August 1883, in the Judicial Department, to discuss certain questions connected with the Deccan Agriculturists' Relief Act.

2. A copy of the minute of proceedings taken at each meeting accompanies and forms part of this report.

3. The points on which we were invited to express our views are marked A to F in Mr. Gonne's note. They are briefly:—

1. Conciliation.
2. Registration.
3. Liquidation of debts—
   - (I) By instalments adjusted privately, creditors receiving the aid of Government to recover along with the assessment.
   - (II) By payment in cash down—
     - (a) Through agency of agricultural banks.
     - (b) By direct advances from Government.
4. Mr. Gonne's own scheme of relief.
5. Modifications in law of execution.

Conciliation.

Para. 3 of Proceedings* dated 31st August.

4. We think that the system should be continued. It has effected much good; its very existence and the facilities it affords for compromise induce many parties to come to a settlement who would otherwise have resorted to the Courts, and this alone is a great gain.

Para. 4 of *idem.*

5. But, to be of any real effect, it must be compulsory and not optional. Those who through perversity and ignorance are indisposed to come to an understanding outside the Courts of law, are the very persons whom conciliation was chiefly designed to reach. To leave it discretionary with such to go before the conciliator or not would be to miss the true aim of the system.

Paras. 12 and 15 of *idem.*

6. We are not inclined to think that abuses of the system are either frequent or formidable. The selection of conciliators seems to have been made with every possible care and precaution. It is also apparent, from the statement A attached to our proceedings, that a large proportion of them are located in villages other than taluka towns; so that, as a rule, access to them would not appear to be unreasonably difficult.

7. The chief defects in the system as at present in force arise from (1) the difficulty of obtaining for the office of conciliator men trained by education or by habit for the discharge of such duties as the position involves, and (2) the difficulty a conciliator encounters in satisfying himself that his invitation has actually reached the person for whom it was intended.

Para. 7 of *idem.*

8. To remedy the first of these defects we propose to confer on Subordinate Judges additional powers of revising agreements entered into before conciliators. To effect this an amendment of section 44 of the Relief Act will be necessary. The procedure we recommend is already, for the most part, adopted in practice, and the changes suggested will merely legalize what it has been found from experience necessary to introduce by executive order.

Para. 8 of *idem.*

9. As to the second defect, we recommend that, in order to secure due service of the conciliator's invitation, a small institution fee be charged on every application to a conciliator. By this means a fund will be formed from which expenses connected with the service of invitations may be defrayed.

* Not printed.

10. We further think that when both parties are willing to settle their differences, they should be allowed the option of bringing their dispute direct before the Subordinate Judge as an official arbitrator, whose decree should be final and unappealable without the intervention of the conciliator. If both parties are anxious for a settlement by official arbitration, the mediation of the conciliator would seem superfluous.

Para. 6 of *idem.*

11. We are divided in opinion as to whether Subordinate Judges should be conciliators or not, but, if it be determined that they shall hold that office, then we are all agreed in considering that a second conciliator, to whom applicants may have the option of resorting, should be available in the same town.

Para. 5 of *idem.*

Registration.

12. We think that village registration has not proved in practice the protection to the rayat it was designed to be, and that the many inconveniences inseparable from it are not counterbalanced by corresponding advantages. Moreover, it appears from the Statement C attached to our proceedings that the registration of mere money-bonds forms less than one-half of the work conducted by village registrars. The larger half of the deeds registered by them would still have to be registered if compulsory registration under the general Registration law were extended to all instruments which affect immoveable property.

Paras. 3 and 4 of Proceedings dated 13th September.

13. We therefore entirely approve of Mr. Gonne's suggestion that all transfers of title to immoveable property be compulsorily registerable, while registration of money-bonds be left optional. We think that a village register showing all transactions relating to the land of the village would be a most valuable public document; but this, we think, could be provided for by an amendment of the Registration Act of 1877, so that there would no longer be any need for the services of village registrars.

Para. 5 of *idem.*

14. We consider that a provsion imposing a limitation on the registration of money bonds to those of a certain value would be most easily evaded, since loans for sums exceeding the amount limited could easily be distributed over a number of instruments, each individual instrument falling within the exemption.

Para. 5 of *idem.*

Liquidation of Debts.

15. After making certain proposals regarding conciliation and village registration, which we have now considered, Mr. Gonne proceeds in his note to summarise his own conclusions on the working of the relief measures. These render it imperatively necessary, in Mr. Gonne's opinion, to remodel the entire scheme of relief, and he proceeds, on the assumption that the Act has been a failure, to discuss certain alternative schemes for improving existing relations between lender and borrower. These are embodied in points C to F of the note.

16. Without unreservedly admitting that the consideration of the subject is forced upon us as a consequence of the failure of the Relief Act to effect its objects, and without approving the general principle of Government undertaking on a wholesale scale the liquidation of the rayats' debts, we proceed to discuss in order the suggestions for ameliorating their condition put forward in the note.

17. At the outset, we wish to record our opinion that no steps should be taken by the Legislature or by the Executive Government towards a general liquidation of the rayats' debts. Such a liquidation must necessarily be preceded by a minute, protracted, and very costly enquiry, the results of which it is impossible to rely on with confidence. Moreover, the ultimate benefit to the indigent cultivators themselves is extremely doubtful. Freed from the burden of debt, they would only be put in a position, at the charge of the general tax-payer, to contract fresh obligations; and it seems most probable that, relaxing their present thrift and industrial energy, they would speedily gravitate back to the condition from which they had been extricated at so much cost and trouble.

Para. 6 of *idem.*

18. It appears to us impracticable to devise any new measures for the relief of the insolvent portion of the agricultural class. By insolvent rayats we mean those whose debts having been reduced under the law in force to their lowest possible figure, are still without assets sufficient to meet their liabilities and any attempt to help them by extraordinary methods seems to be quite a hopeless task. Having provided a machinery by which they may most equitably be freed from the claims of their creditors, it appears to us that the

Government has done all that can reasonably be expected. If such rayats, notwithstanding the advantages thus extended to them, are unable to free themselves from debt and make a fresh start in life as good cultivators and useful citizens, it seems inevitable that they should be left to the ordinary results of their own indiscretions.

19. Nor do any special measures seem needed to relieve even solvent debtors from their liabilities. The process of liquidation of debts is being gradually effected under the operation of the Relief Act, and it seems probable that in a few more years the settlement of all old scores will have been completed. The indebtedness of solvent rayats does not, in our opinion, impose any such serious obstacle to their general welfare or to their efficiency as tillers of the soil as to call for the intervention of Government legislatively or executively. Their credit has not been so impaired as to hinder them from getting advances according to their requirements from the usual local sources.

20. At the same time, we wish to raise no objection to the trial of any experiment calculated to improve the relations between lenders and borrowers, provided it affords reasonable prospect of success. But we think such experiment should be regarded as quite independent and not as part of a scheme elaborated to a tone for and supplement the alleged defects and shortcomings of the Relief Act.

21. With these preliminary general remarks we pass on to consider on its individual merits each of the proposed schemes of relief.

22. And first as regards point C we think that the payment of debts by instalments spread over a term of years extending to 30 or more, is the most open to objection of them all. Following the uniform precedent observed in the administration of all the Encumbered Estates Acts of this Presidency, we are strongly of opinion that the period of obligation for payment of debt should not, under any scheme of liquidation, be permitted to extend beyond 20 years.

Para. 7 of *idem* and para. 4 of Proceedings dated 21st September.

23. When both parties to a decree so desire, we think that a provision of law would be useful whereby fixed instalments might be recovered each year along with the Government assessment. By this procedure, much trouble and expense to the parties would be saved. The cases that would call for its application would be few and limited. There must be a decree for a certain amount due, and this must be followed by the assent of the parties to the above particular mode of satisfaction. In such a case it would be practically of little moment whether the debt be recovered by the Judicial or the Revenue agency of the State. There need be no apprehension of odium attaching to the executant of the declared will of creditor and debtor alike.

Para. 5 of Proceedings dated 21st September.

24. To pledge the future earnings of the debtor's labour in satisfaction of the demands against him, we regard as the surest way of paralysing his energies and of rendering his condition little better than that of a bond slave.

Para. 3 of *idem*.

25. In discussing point D of Mr. Gonne's note we will first advert to the question of general liquidation of debts. We have already recorded an opinion strongly adverse to such a measure whether designed for the relief of solvent or insolvent rayats, on the grounds that, in the case of the former, it is unnecessary, and in that of the latter inexpedient, impolitic, and, withal, of doubtful benefit to those concerned.

Para. 7 of *idem*.

26. As to insolvent rayats who constitute fully one-half of the agricultural class, we are of opinion that no more effective means of relief can be devised than those already provided by the law. By abolishing imprisonment for debt and making land and other immoveable property liable only when specifically pledged, a very complete check has been put on the creditor's power of oppression and terrorism. That the loan-market has, as a natural result, become contracted, and that credit has been restricted to its proper limits, is not at all a subject for regret and was clearly foreseen as a certain consequence of these provisions. In few words, we would simply leave the creditor of an insolvent rayat to get what satisfaction he can by processes of law for the time being open to him.

Para. 7 of *idem*.

27. In the case of solvent debtors, we are not agreed as to whether the existing law of execution is insufficient for the recovery from them of all debts for which they are justly liable. At all events we have no data before us on which to form a unanimous opinion.

28. As to future loans, we think that, so far as Government is concerned, assistance to agriculturists should take the form of tagai advances on an extended and more liberal scale; but that such loans should be restricted to agricultural objects and that solvent agriculturists,

Para. 8 of *idem*.

with whom alone Government ought to deal, should be left to arrange for their domestic and other non-agricultural requirements by advances raised locally according to usage.

29. With an improved and strengthened agency in the Revenue Department for the despatch of business (the necessity of which has become so urgent that we understand the details are even now under the consideration of Government), we think the difficulties encountered by applicants in obtaining advances promptly and on the spot will be minimised.

Para. 9 of *idem.*

30. With respect to agricultural banks we have not thought it necessary to consider the terms on which the establishment of the contemplated bank for the Purandhar Taluka should be permitted, because the terms proposed are now before the Government of India for final decision. Without expressing any opinion as to the probable result, we see no objection to the experiment being tried on a limited scale and in a limited area in the manner intended. We would however recommend, in conformity with our opinion already recorded above (paragraph 22), that liability to the bank for advances be not permitted to extend beyond 20 years. We may also remark that, as the necessary liquidation of debt preceding the institution of the bank would be undertaken on behalf of those only who could give good security for repayment of the advances made; and as the loans are to be restricted to sums representing not more than 75 per cent. of the value of the debtor's lands, the rayats whose debts will be taken in hand by the bank must be regarded as solvent rayats.

Mr. GONNE'S own scheme of relief.

Para. 10 of *idem.*

31. We have come to the conclusion that the proposal discussed in point E of the note, namely, that Government should make advances for all purposes through the agency of a village committee on the joint responsibility of all the assessment-payers in the village who might agree to join the union, is practically unworkable. Insolvent agriculturists would be altogether excluded from the benefits of the association. It is not to be imagined that the solvent members of the community would bind themselves to be jointly and severally responsible for the debts of their insolovent neighbours. Indeed it is hard to perceive why they should. The advantages they would enjoy appear to bear no proportion to the risk they would incur as guarantors. Besides this, our institutions and forms of civilization have gone far to extinguish village communal spirit. The old order of things is fast passing away and the individual has nearly supplanted the community, represented by its panch, as the social unit. It would be vain to try and bring the dead to life. We believe that if these village committees were started as an experiment, a few year's trial would bring to light corruption and abuse of powers so glaring, that the entire community for whose benefit they were set on foot would demand their abolition with one consent.

Modifications in Law of Execution.

Paras. 3, 4 and 5 of Proceedings dated 28th September.

32. With respect to point F of the note, we are equally divided in opinion as to the immediate necessity of a modification of the law of execution by which creditors may be enabled, as before, to attach and sell immoveable property in satisfaction of debt. We all admit the equitableness of the principle that after the history of a debt has been subjected to minute judicial enquiry, after unfair demands have been cut down and payment fixed according to the ascertained means of the debtor, no property of his should be exempt from liability in satisfaction.

Paragraphs 3, 4 and 5 of Proceedings dated 28th September.

33. Those of us who desire the law of execution to remain unchanged would limit its continuance, as it is, to a few more years, to a time when old scores will, for the most part, have been settled and the rayat will be comparatively freed from the burden of indebtedness. They deny that the alleged injustice to creditors from the present law has been demonstrated by evidence; and, unless proved, they believe they are justified in doubting its existence. They consider that the Relief Act would be maimed and rendered of little effect if the restraining provisions as to execution of decrees were expunged from it.

Paragraphs 3, 4 and 5 of Proceedings dated 20th September.

34. Those of us who favour the change are convinced that the exemption of immoveable property from attachment and sale works great injustice to creditors who are really debarred from recovering even the reduced sums awarded them by the Courts after the strict inquiry into their claims necessitated by the Act. They can find no ground for further prolonging

this injustice, and they can suggest no other mode of correcting it but by removing the restrictions imposed on execution under the Relief Act except that which abolishes imprisonment for debt.

35. As to the proposal of Mr. Gonne that the proportion which each instalment should bear to the total debt be regulated by law, we think it would be a mistake in any way to fetter the discretion of the Courts by whom each separate case must be considered on its own merits and payments fixed accordingly. No standard or scale would suit all cases.

Paragraph 6 of *idem.*

36. In fixing a maximum term of years beyond which payment of instalments under decrees should not be allowed to extend, the danger confronts us that the maximum so fixed will come to be regarded as in reality the minimum. If 20 years were decided as the limit, the tendency would soon become apparent for debtors to believe that they were entitled to pay their debts by instalments spread over 20 years and they would consider it a hardship if the time fixed was of less duration.

37. Separate notes by all the members except Dr. Pollen are appended to these papers.

NOTES.

I concur with Mr. Moore in his dissent against the proposal to abolish registration. It is true that registration by incompetent, corrupt and uneducated kulkarnis was not only a failure but a farce. The faults however lay with the agency and not with the system of registration. These faults have now been remedied by the appointment of paid and reliable special Registrars. As far as I can learn, the new arrangement is working well, and it would, it appears to me, be unfair to the system of registration to condemn it without a full and fair trial. Registration is undoubtedly a grand protection to the ignorant rayat, and the benefits it secures to the cultivator are too valuable to be thrown aside without substituting some practical system under which the rayat can be protected against the sawkar, kulkarni and professional bond-writer.

I would go even further, and would venture to hope that the system of registration required by the Deccan Agriculturists' Relief Act may be extended to all other districts of the Presidency.

E. P. ROBERTSON.

18th October 1883.

Paragraphs 12 to 14.—I most strongly object to the abolition of village registration, as I consider the system protects the ignorant rayat against fraud. The present stipendiary village registrars are unconnected by family or other ties with the circles of which they are in charge, and they are, therefore, free from factions and cliques. Moreover, they are regarded with jealousy by the late village registrars (the kulkarnis), by the sawkars and by the professional bond-writers, who used to combine together to defraud the illiterate rayat. With these three men on the look-out to catch them tripping, the special village registrars have to be very careful. As far as I have been able to judge, they generally try to ascertain the wishes of the sawkar and the rayats and to satisfy themselves that the latter thoroughly understand the nature of the bond. Even the more intelligent rayats prefer present system, as it relieves them from the unscrupulous bond-writer with his heavy fees.

I also object to the registration of money-bonds being made optional, as this will stimulate careless borrowing and will again throw the unwary rayat into the hands of the sawkar and the professional money-lender.

The present system has not yet had a fair trial, and it should be continued for some years more.

J. MOORE,
Collector of Poona.

POONA COLLECTOR'S OFFICE;
13th October 1883.

There are two points on which I find myself unable to concur with the majority of the Committee, *viz.*:—

(1) as to compulsory conciliation, and
(2) as to the expediency of an immediate amendment of the Deccan Agriculturists' Relief Act.

2. I am of opinion that resort to a conciliator should be voluntary and not obligatory. By this I do not mean what Mr. Gonne proposes, *viz.*, that when two parties have come to an agreement they should be required to repair to a conciliator to have their agreement

recorded. This would make the conciliator no longer a conciliator but a Registrar merely. What I mean is that the law should not say, as it does now, that unless and until a plaintiff has been before a conciliator and tried to get his opponent to come to terms, he shall not be permitted to file a suit against him. This provision compels hundreds of people to go before a conciliator when there is not the least likelihood of their opponents entering into an amicable settlement with them. The files of the conciliators are thus overcrowded with applications, and much time and labour are uselessly expended by them in perfectly hopeless cases to the detriment of the persons who are anxious to avail themselves of their good offices. Conciliation, freed of this great impediment to its success, would, I think, be a valuable aid to the administration of justice throughout the Presidency, and I would gladly see it made a general measure. Then Government would appoint conciliators only where good and efficient men were available for the office, and each person appointed, if he bore a good reputation as a just and equitable man, would be greatly resorted to and would be able to do much good without being overburdened with a mass of useless work.

3. With regard to the second point, the question appears to be whether the Act should be allowed to remain as it is for a further indefinite period whilst fuller experience is being gained of its effects, or whether it should not be at once amended in the respects in which it operates unjustly, or it is wholly inoperative or is defective. I am decidedly in favour of the latter alternative. The suspension of the right of creditors to attach and sell their debtor's immoveable property in execution is undoubtedly causing a serious loss to them, and since the Act provides no adequate substitute for this right, it cannot be denied that this portion of the Act operates unjustly. All the members of the Committee appear, indeed, to admit this, but one-half are in favour of continuing the suspension for some further time For my part I do not think that any sufficient reason is adduced for this postponement. No delay ought to be allowed in the removal of an admitted injustice. And as regards the particulars in which the Act is inoperative and useless (*e.g.*, insolvency, management of debtor's lands by the Collector, compulsory grant of receipts, and pass-books), or in which it is defective (*e.g.*, village registration and conciliation), it seems to me to be a wiser policy to amend it at once and then to observe the results of what remains or is substituted, than to carry on for a further indefinite period the administration of the present unsatisfactory enactment.

13th October 1883. J. R. NAYLOR.

With regard to conciliation, I differ from the majority of the Committee who think that the conciliation experiment has been a success. On the contrary, I am disposed to think that it has turned out a failure. And this result is, in my opinion, due to the fact that, however competent and really reliable some of the conciliators may be, they do not, as a body, command the confidence of the agricultural public. No.

2. I perceive no just grounds for apprehending bias on the part of Subordinate Judges when called upon to decide suits in which the parties have already been before them in their capacity as conciliators. They appear to me to be the best of all possible conciliators in every respect. Even supposing the existence of bias, the leaning would be on the right side and would be always liable to correction as the true circumstances were disclosed by the evidence. A Magistrate is not considered disqualified to try a criminal case because he has already had under review the records of the Police enquiry or, as often happens, even though he has himself conducted the preliminary investigation. I therefore think that, excepting in very rare instances, the Subordinate Judges should be the sole conciliators and that not less than one Subordinate Judge should be appointed for each taluka where the Relief Act is in force. A provision of law similar to that of Section 26 of Act X of 1862 allowing a drawback of stamp duty as an inducement to the parties to come to terms before the Judge previous to the framing of issues or the hearing of evidence, might be usefully introduced. I have found it to work well in the Akalkot State, of which I am now in charge and where this procedure is in force.

3. In connection with this subject it must be borne in mind that to ensure efficient work being done by amateur and non-official conciliators, a constant and close supervision is indispensable. This labour of revision is almost as troublesome to the Judges as if they had themselves originally acted as the conciliators. It certainly cannot be entrusted to the overworked Revenue authorities. On whom will it devolve and what securities are there that it will be properly and efficiently performed when the special establishment has ceased to exist?

4. Of the alternative schemes proposed for liquidating the rayats' debts, namely, (1) by instalments, and (2) by cash down, the latter seems the method most advantageous to all

concerned. The best form which a cash settlement could take would seem to be direct advances by Government recoverable as land revenue. The creditor would be induced to make liberal sacrifices with the temptation of ready money before his eyes. The debtor would get the benefit of these concessions in repaying the advance. I agree with the Committee as to the inexpediency and inutility of liquidating the debts of such rayats as are insolvent. But I differ from the rest of the Committee who hold that it is unnecessary to liquidate the debts even of solvent rayats. The prospects of about 40 per cent. of the agricultural class are most seriously marred by the heavy burden of former debts and the ruinous rates at which they are constrained by the force of circumstances to incur fresh ones. These are the middle-class and relatively solvent rayats. At all events an equitable settlement of the demands against them would in most cases render them quite solvent. They form the backbone of the peasantry and for Government to aid them would seem alike politic and expedient. I believe the required assistance can best be afforded by Government advancing the money to pay off settled claims in cash. This form of liquidation would ensure favourable terms of compromise by the creditor who would generally hesitate to put aside the temptation of ready money in hand. No special measures to bring about a general settlement seem requisite. Debts will be settled smoothly and surely under the law as it stands and by private arrangement. Claims so settled should alone be dealt with in the manner I propose. Moreover, I would urge that some such scheme is necessary as a measure of equitable compensation to creditors.

5. The need for future loans, too, might be met by similar advances. The land being accepted as the sole security, no loan should be allowed to exceed in amount the selling value of the land. With such good security I fail to see why the mode of applying the money advanced should be too closely scrutinized. If part of it be spent on objects other than those for which it was lent, it does not appear that with interest on its capital and good security for repayment, Government need trouble itself greatly on the subject.

6. There is one point regarding Agricultural Banks which I venture to touch upon. At no distant period some modification in the existing law as to execution of decrees in favour of judgment-creditors, seems inevitable. It appears probable that any such modification would be fatal to the success of the bank scheme. The bank, if accepted and supported by the monied classes, would be so, because they regard it as, on the whole, the best and safest attainable substitute for their customary investments barred by the operation of the Relief Act. The cause removed, the effect will cease. The law of execution restored to its pristine severity against the property of the debtor, the main reason for declining to lend as before would no longer influence the sawkar. Whatever may be urged by philo-money-lenders, it cannot seriously be questioned that the sawkar, in spite of his risks and losses, realized, on an average, enormous gains. It is not likely that he would rest content with the small and comparatively safe returns to his capital held out to him by the bank when he can pursue unchecked his usual speculative business which experience has taught him pays so well.

7. As regards point F of Mr. Gonne's note, my opinion coincides generally with that of Mr. Naylor recorded separately.

POONA;
15th October 1883.

H. WOODWARD.

While agreeing in general with the report of the Committee which we have signed, we deem it necessary to state further in regard to point A, that special powers should be conferred on all conciliators working in taluka and zilla towns to enforce the attendance of parties in the same way as the Civil Courts' ordinary process is now enforced by law. This suggestion had the support of the Bombay Government and of the Honourable Mr. Hope, though it was negatived by a majority of the Supreme Council when the last Amendment Act was passed. We think that when the Bill has to be amended again, this point should be again pressed upon the consideration of the Legislature.

M. G. RANADE.
G. M. GADRE.
CHINTAMANRAO V. NATU.

In regard to point B, I am of opinion that the scheme of village registration should remain in force as it is, with this modification only that its provisions should apply to all those agriculturists who cannot read or write their own vernacular Marathi. The protection intended is not desirable in the case of those who can read and write sufficiently to write the bond themselves in their own handwriting. Whenever a bond

is written by the party executing it, it need not be registered. In all other cases the present law must remain in force.

G. M. GADRE.

In regard to point C, we are of opinion that the suggestion accepted by the Committee in regard to the repayment of monies decreed in small instalments (settled with the express consent of the parties, and which instalments should thereupon be recovered by the Revenue agency along with the assessment), should be extended to settlements made by conciliators, and sanctioned by the Civil Court. This would promote settlements of many disputed claims, and greatly strengthen the hands of conciliators. No. 1

G. M. GADRE.
CHINTAMANRAO V. NATU.

In regard to point D, we have not deemed it necessary to state our views in regard to it, because the Committee in their formal Resolution approved of the experiment in a single taluka, and left the details to be settled by the Government of India. In the body of the report the Committee have stated that they see no objection to the experiment, and we have signed the Report on the understanding that this statement is in substantial accord with the recommendation contained in the detailed Resolution. In regard to the period of instalments, we wish to state that the period of 20 years was accepted by the Committee as a compromise. We still think that the longer the period, the more convenient it is in the interests of the debtor classes. The Government of India has accepted this principle in its recent amendment of the Tagai or Land Improvement Loans Act, and has sanctioned a period of 35 years as the term over which the instalments should be spread. We think that in all arrangements in connection with the experimental Bank scheme or private adjustments, the instalments might with the consent of parties be spread over 30 or 35 years. No. 1

M. G. RANADE.
G. M. GADRE.
CHINTAMANRAO V. NATU

A.

Statement showing the number of Conciliators in Taluka towns and in other than Taluka towns. No. 18

Name of District.	Number of Talukas and Taluka towns.	Number of Conciliators in the Taluka towns.	Number of Talukas other than Taluka towns.	Number of Conciliators in other than Taluka towns.
Poona	7	19	28	30
Satara	7	23	30	31
Nagar	10	25	41	42
Sholaur	7	17	46	54
TOTAL	31	84	145	157

It will be seen from this statement that, as against 31 taluka towns, there are 145 villages and towns other than taluka head-quarters, where conciliators have been appointed, and that as against 84 conciliators residing in taluka towns, there are 157 conciliators residing elsewhere than in taluka towns. It cannot be therefore correct to state that the agricultural classes have not easy access to conciliators within their own vicinity. On an average, there are in each taluka more than four conciliators residing elsewhere than in the taluka town.

M. G. RANADE.

B.

Statement contrasting the work done by Conciliators with the statistics of work done in the Civil Courts of the years 1880, 1881 and 1882. No. 18

Conciliation.	Totals for three years.	Suits diposed of.	Total for three years.
Number of applications disposed of	159,461	Number of suits disposed of	22,612
Withdrawn	13,771	Withdrawn	4,524
Dismissed	36,353	Dismissed	3,058
Agreements made	25,400	Claims admitted	5,337

Comparing these figures, it will be seen that the withdrawals before conciliators are about 8 per cent. and the dismissals are about 24 per cent., the two together making 32 per cent. of the whole number disposed of by conciliators. In the Courts, the withdrawals are about 20 per cent., and the dismissals about 13 per cent., the two together being about 33 per cent. The proportion of dismissals and withdrawals before conciliators is thus nearly the same as that which obtains in the Courts.

The number of admitted suits in the Courts is about 24 per cent. of the whole number decided. Before the conciliators, the proportion of agreements to total disposals is 15 per cent., but it is to be noted that out of the total number of 159,461 applications disposed of, defendants failed to appear in 59,158 cases. Excluding this number from the total disposed of, the number of agreements is 25 per cent., which is equal to that of admitted cases decided by the Courts. It will thus be seen that in regard to withdrawals, dismissals and admissions, constituting between them nearly 60 per cent. of the numbers disposed of, the relative proportions are as nearly as possible equal.

As regards contested suits the Courts have a decided superiority, because their powers of enforcing attendance and recording evidence are greater. There is some misconception however as to the number of suits in which, under the Relief Act, the Courts find it possible to go behind the bond. Out of a total of 22,612 suits disposed of by the Courts in the three years 1880, 1881, 1882, the past history of the transaction was examined in 2,464 suits (or 11 per cent.). Excluding from the total above given, the number of withdrawals, dismissals and *ex-parte* suits, I find that in 14,237 suits defendants appeared and were examined. Out of this number the past history of the transaction was examined in 2,464 or in one out of six suits. This shows that old transactions form the subject-matter of disputes in less than 11 per cent. cases of the whole number disposed of, and about 16 per cent. cases in which defendants appeared.

The registration returns for 1880 and 1881 corroborate this position, for out of 60,179 money-bonds passed in 1880, 7,837, or about one in eight bonds, were old bonds renewed. In 1881 out of 42,583 money-bonds, 6,142, or one-seventh of the whole number, were renewed bonds. In the case of mortgages this proportion is a little higher. Out of 73,172 mortgage-bonds passed in the two years 1880 and 1881, 18,517, or one-fourth of the whole number, were renewed bonds. As litigation is chiefly based on money-bonds, the proportion of one-seventh furnished by these returns bears out the proportion arrived at independently from the statistics of the work done by the Civil Courts. It may be admitted that, in regard to these old transactions, the Courts ensure a more satisfactory trial in the interest of the debtor than can be secured by the conciliation system. In regard to new transactions, however, which are five-sixths of the whole number, the conciliators succeed in securing an abatement of the claims which is nearly as large as that effected by the Courts.

Dr. Pollen's report for 1882 shows that the abatement of claims was about 32 per cent, in the work done by the Courts, and the same figure, or a somewhat higher proportion, is shown by the conciliators' returns. Making all allowance for exaggerated claims, these abatement figures show that conciliators work to some advantage, notwithstanding the many defects in the system.

M. G. RANADE.

C

Satement showing the total number of Instruments registered under Section 56 of the Deccan Agriculturists' Relief Act as compared with the Instruments relating to Immoveable Property during the three years 1880-81, 1881-82, and 1882-83.

Years.	Total number of instruments.	Instruments affecting immoveable property.			Total.	Percentage on the whole number of instruments.
		Sales.	Mortgages.	Others.		
1880-81	155,291	8,031	44,516	34,332	86,879	55·9
1881-82	112,665	6,763	25,529	29,874	62,166	55·1
1882-83	109,528	8,084	22,636	33,532	64,252	58·6

Final Note by the Honourable MR. C. GONNE, *Chief Secretary to the Government of Bombay, on the working of the Deccan Agriculturists' Relief Act, 1879.* No. 1

Government have now before them the Report of the Committee* appointed for the discussion of certain suggestions in connection with the Relief of the Deccan Agriculturists. Also a separate paper by Mr. Lee-Warner, who would have been placed on the Committee if his services had been available. Mr. Lee-Warner has not only given great attention to the whole subject, but is an important witness as having served as an Assistant Collector in some of the affected districts. Papers have been added from Mr. Jopp, who in the same way is an important witness, and whose opinions previously given were contested by both Mr. Woodward and Mr. Lee-Warner. Finally, the collection contains a further memorandum by Mr. Justice West and a letter from the Honourable Mr. Hope.

* Mr. E. P. Robertson, Commissioner, Central Division.
Mr. J. G. Moore, Collector, Poona.
Dr. A. D. Pollen, Special Judge under Act XVII of 1879.
Mr. J. R. Naylor, Remembrancer of Legal Affairs.
Mr. H. Woodward, First Assistant Collector, Sholapur.
Mr. Mahadev Govind Ranade, Special Sub-Judge under Act XVII of 1879.
Mr. Chintamanrao Vishvanath Natu, Sawkar, Poona.
Mr. Govind Mahadev Gadre, Sawkar, Poona.

The opinions now given in a great measure take the form of answering views put forward in my former note, and on some points those views have been misapprehended. I do not propose however to prolong my present remarks by any rectifications. The object of my former note was to aid discussion, and if some expression of opinion was irresistible it was opinion in growth.

2. These papers have been added to the reports of Mr. Woodward and Dr. Pollen, and the previous memoranda of Mr. West, etc., the receipt of which preceded the appointment of the Committee, and the collection, to which an Index has been added, may be regarded as a record of the close observation of the working of the Act which the Secretary of State, in paragraph 6 of his Despatch No. 2 of 26th January 1882, desired might be taken.

I propose now to sum up opinions on the points mentioned in that Despatch following the order therein indicated. Some repetition of what has been said before is unavoidable. Notice is required first of certain details, and then of the general principles and operation of the Act.

Conciliation.

3. The Secretary of State's first question is whether experience has induced the Government of Bombay to modify their former views unfavourable to the French system of conciliation. Before this is considered it is necessary to note opinions on the working of the present system.

4. Mr. Woodward now states as the result of his special enquiries that he is disposed to think the Conciliation System has turned out a failure—this being "due to the fact that, however competent and really reliable some of the Conciliators may be, they do not, as a body, command the confidence of the agricultural public." Mr. Woodward concurs with Mr. Justice West in the proposal that will be presently noted.

5. The other members of the late Committee, with the exception of the Legal Remembrancer, Mr. Naylor, are satisfied with the existing system, subject to some modifications. They do not concur in the opinion I had given that conciliation or rather the attempt at conciliation should be optional, and not compulsory, except that they would allow the conciliation process to be dispensed with when *both* parties prefer to bring their dispute at once before the Subordinate Judge as an official arbitrator. They also take note of the difficulty of obtaining for the office of Conciliator men suitably trained by education or by habit, and make a suggestion which seems impracticable and simply condemnatory of the existing system, namely, that Subordinate Judges should be empowered to revise the Conciliators' settlements. They also think that a small institution fee should be charged on applications to a Conciliator with a view to meeting the expense of an effectual service on the other party of an invitation to appear.

6. Dr. Pollen's approval, however, of the existing system must be taken with an important qualification. He writes in his 51st paragraph "nothing has happened to justify a discontinuance of the system. At the same time its working requires constant and vigilant superintendence to prevent its being made use of as a machine for the manufacture of renewal bonds and collusive agreements rather than for the amicable settlement of *bond*

* Printed on pages 361 to 363.

fide disputes.” This vigilant superintendence, which at best can be easily evaded, will cease when the Special Officer is withdrawn. Dr. Pollen, it will be observed, also does not recommend the extension of conciliation beyond the Deccan Districts.

7. The Legal Remembrancer, Mr. Naylor, writes: “I am of opinion that resort to a Conciliator should be voluntary, and not obligatory.” He adds “what I mean is that the law should not say, as it does now, that unless and until a plaintiff has been before a Conciliator and tried to get his opponent to come to terms he shall not be permitted to file a suit against him. This provision compels hundreds of people to go before a Conciliator when there is not the least likelihood of their opponents entering into an amicable settlement with them. The files of the Conciliators are thus over-crowded with applications and much time and labour are uselessly expended by them in perfectly hopeless cases to the detriment of the persons who are anxious to avail themselves of their good offices. Conciliation freed of this great impediment to its success would, I think, be a valuable aid to the administration of justice throughout the Presidency, and I would gladly see it made a general measure.”

8. The following is, I hope, a correct summary of the views on conciliation of Mr. Justice West:—It is a sound principle that an attempt should be made to stop litigation at the threshold of the Courts by disinterested and competent advice. But a person is not competent to advise unless he is competent to adjudicate. Men therefore with the qualifications of the existing Conciliators (excepting a very few) are competent to advise only in very simple cases. For conciliation in other cases no qualified persons are available but the Subordinate Judges in office or retired. “Their employment in this function should be systematised and made exclusive, at any rate for all cases except those of claims on simple contract.”

9. Mr. Hope and Mr. Lee-Warner are entirely satisfied with the progress of the present system, and think that for thorough efficiency it needs only that the Conciliators should be given power to compel the appearance of parties before them, which also is strongly recommended by Mr. Ranade and the two sawkar members of the Committee. Mr. Hope urges that the number of Conciliators should be freely increased.

10. The attachment of the thorough supporters of the Act to its conciliation provisions is not quite intelligible. Conciliation affords, both to borrowers and lenders, a clear opportunity for defeating the policy of the Act. While Judges are compelled to do equity, Conciliators may act on what principles they please. While cultivators are to be protected against their own recklessness in incurring future liabilities to meet present needs, conciliation enables them and tempts them to bind themselves for this purpose not with bonds, but with decrees which are open neither to appeal nor to revision. While judicial procedure is to be shortened and simplified, conciliation necessitates a preface of indefinite length to every suit. It stops a suit in one case out of four, and causes useless trouble and delay in the other three, and the good it does may be described generally as promoting settlements where there are no disputes.

11. Having taken note of these opinions, the Government will be in a position to consider, as desired by the Secretary of State, whether their views, unfavourable to the French system of conciliation, are modified. And first it will be well to note shortly how that system first came under consideration and what it is.

12. Lord Cranbrook, by Despatch No. 4 of 1878, while sanctioning experimental legislation on the lines of the Relief Act, observed also that much of the evil calling for remedy rose from insufficiency in the number of the Subordinate Civil Courts, from which it resulted that Judges had not time enough to go deeply into the equities of the claims of creditors, and the (agriculturist) debtors often could not spare the time to attend at a Court distant from their homes even though they might have valid defences. Attention was then drawn to the French system under which the whole country is parcelled into cantons averaging about 81 square miles in size, each canton being provided with a stipendiary *Juge de Paix* drawing £70 and upwards per annum and vested with a final jurisdiction in small money suits up to 100 francs, and a jurisdiction subject to appeal in other suits within limits (not specified). Also Lord Cranbrook drew attention to the fact that the *Juges de Paix* were bound in every case to endeavour in the first instance to promote an amicable settlement between the parties, and no trial could be entered on without this preliminary except in cases of urgency, including Commercial cases.

13. It is not quite clear from the available papers whether the *Juges de Paix* discharge the conciliatory function in those non-urgent cases only that they are competent to decide either finally or subject to appeal, or whether they discharge it also in cases of whatever

* Printed on pages 53 to 57.

magnitude which are otherwise beyond their cognisance. The latter understanding appears to have been generally adopted by those who have alluded to the system, but I gather that it meets the approval of Mr. Justice West strictly on the former understanding. He writes "In France and the other European countries which use official Conciliators no disputes are brought before these functionaries except such as are of the simplest character."

14. The Deccan Relief Law provided for the appointment of Village Munsifs with very petty jurisdiction, and also of Conciliators with no jurisdiction, but the Indian Governments held that in this country the combination of the Judicial with the Conciliatory function was liable to abuse. The law however did not prevent Subordinate Judges being vested with the conciliatory function and their number was increased.

15. By Despatch* No. 4 of 5th February 1880 Lord Cranbrook decided to leave the Act to its operation, but remarked "I consider that conciliation can only be properly carried out by a functionary familiar with legal procedure and having some authority. In France, where the system has met with success, the Conciliator is the ordinary *Juge de Paix* sitting in his own Court.

"It is within the scope of section 38 to nominate the Local Judge, as far as possible the Conciliator in each case, and I presume this course will be adopted by these entrusted with carrying out the provisions of the Act."

16. All the Subordinate Judges have not been vested with the conciliatory function, as in the first operation of the Act these officials have been fully occupied with the actual trial of cases, but 15 of the Subordinate Judges have been made Conciliators by way of experiment. They have been made Conciliators, however, along with other non-official persons to whom plaintiffs can resort if they prefer.

17. There is no reason to believe that the experiment, so far as it goes, has not been a success, but in fact it would be next to impossible to discover whether it has worked badly in the only way apprehended, namely, by disturbing the bias of a Judge's mind, or tempting him to over-press conciliation to save the trouble of adjudication. Parties, *i.e.*, creditors, it appears generally prefer the non-official Conciliators, and of the 15 Subordinate Judges only six have been much resorted to at the conciliation stage, but this was to be expected and in no way reflects on the efficiency of the Subordinate Judges in that connection.

18. The question to which the attention of Government is invited by the Secretary of State seems to be not merely whether all the Subordinate Judges should now be made Conciliators, but whether also they should be the sole Conciliators, the function being withdrawn from all the non-official gentlemen who are now vested with it, except perhaps those who are retired Subordinate Judges.

19. It will be seen that Mr. Justice West advocates this course while suggesting as open to consideration the appointment of other non-officials to a second class of Conciliators with power to conciliate only in petty or simple cases.

20. Mr. West throws his suggestion as regards the conciliatory function of Subordinate Judges into a very practical form which should be stated in his own words—"it should be provided that in all suits of less than R500 valuation one-fourth only of the full Court-fee should be paid in the first instance. The defendant should then be summoned and the parties being brought face to face, the Subordinate Judge should, if he found it possible, suggest a settlement of the dispute. If the parties should agree on the terms proposed, or on any terms, they should be embodied in a decree; if not, the plaintiff should pay up the remaining three-fourths of the Court-fee and proceed with his suit."

21. In my former note, I gave the opinion (1) that the appointment of *competent* non official persons as Conciliators would be a useful aid to civil justice, provided resort to them were voluntary, and (2) that the Subordinate Judges should not exercise the conciliatory function. But I yield to Mr. West's arguments that it would be better to have no amateur Conciliators, and that the function should be exercised only by Subordinate Judges in office or retired. I still cannot concur with him in thinking that the combination of the Judicial and Conciliatory function is open to no objection, but the objection, I admit, may be classed among the imperfections to which all human arrangements are subject. Mr. West's plan has the great merit of holding out an inducement to litigants to settle their disputes without troubling other people to attend as witnesses. It adds nothing to the trouble of litigation to the parties themselves, and is entirely in accordance with the spirit of our Civil Procedure Code, of which section 152 provides that "if at the first hearing of a suit it appears that the

* Printed on page 185.

parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment." The novelty of the new proposal in fact is in the remission of court-fees in the case of parties who settle their disputes at the first hearing.

The proposal applies to the administration of civil justice throughout British India, and not merely to the agricultural cases in the Deccan.

22. I think, however, that when legislation takes place, power might be taken to vest one or more members of a Subordinate Judge's subordinates, whose training could be secured, with a limited jurisdiction, including the Conciliatory function. Such officials, whose appointment would be optional with Government, might be sent on circuit through the Subordinate Judge's charge and so bring justice near to the homes of the people in the only way that seems possible without great expense to the State.

23. Finally it may be mentioned on this point that the existing system of conciliation can be discontinued by Government at discretion without any alteration of the law. And practical effect could be given to the alternative scheme suggested by Mr. Justice West by executive order in the matter of conditional remission of Court-fees.

Village Registration.

24. The Secretary of State next asks for an opinion on the provisions relating to village registration.

25. It should be first noted that the term "registration" does not imply the whole function discharged by the Registrars. Their use is not only to prevent forgery (which is not supposed to have been commonly practised) but to ensure that the agriculturists understand the liabilities they incur when passing bonds. Accordingly, the law is that no bond, etc., executed by an agriculturist shall be legal evidence unless it is "written by, or under the superintendence of, and is attested by, a Village Registrar."

26. It should further be noted that the utilisation of the Village Kulkarni class for this function has been tried, and with common consent abandoned, and consequently the expectation that almost every village would be supplied with its own Registrar has not been realised, but the districts have had to be parcelled out for registration purposes into "local areas" of such size that parties must often go some miles to find a Registrar. The Registrars are appointed by the Registration Department and receive each only R12 per mensem pay. Even at this rate the system works at a loss, and as many Registrars have little or no work, the Inspector General of Registration is now considering the propriety of reducing the number of "local areas," whereby the cultivators in many places will find themselves at a still greater distance from a Registrar's office.

27. Now, considering how petty are the ordinary transactions of a rayat's life, there cannot be two opinions as to the extreme inconvenience of a law which requires a great proportion of the rayats to walk some miles to a Registrar whenever there is occasion for written security, and (2) the registration process which involves the attendance of witnesses for identification, who have to be paid, is generally a most disproportionate addition to the cost of the accommodation obtained, and (3) the tendency of such a law must be to discourage people from using the convenience of written securities. There is in fact great reason to believe that it is having this effect.

28. But the question is whether all these disadvantages are outweighed by the protection which the system affords to cultivators against being cheated or out-witted by money-lenders.

29. The late Committee have recorded: "Dr. Pollen recommends that village registration be abolished altogether. The recommendation is supported by a majority of the Committee. While entirely approving the principle of the system, the majority consider that it has failed in practice to afford the protection against fraudulent transactions which it was designed to afford, and that the inconveniences inseparable from the working are not outweighed by any corresponding advantages."

30. The dissentients on the Committee are Mr. Robertson and Mr. Moore, of whom the latter writes: "I most strongly object to the abolition of village registration, as I consider the system protects the ignorant rayat against fraud. The present stipendiary Registrars are unconnected by family or other ties with the circles of which they are in charge, and they are therefore free from factions and cliques.* * * * As far as I have been able to judge, they generally try to ascertain the wishes of the sawkars and the rayats and to satisfy themselves that the latter thoroughly understand the nature of the bond. Even the more intelligent rayats prefer the present system as it relieves them from the unscrupulous bond-writer with his heavy fees."

Mr. Gadre, one of the sawkar members of the Committee, is also in favour of the present system in the case of those rayats who cannot read and write.

31. Mr. Lee-Warner writes: "It was one of the least questioned provisions of the Act that registration should be compulsory," and "if compulsory registration of the transactions between agriculturists and money-lenders were abolished, quite one-half of the benefit of the Act would have been destroyed."

32. Mr. Justice West is entirely against compulsory registration except in the case of assurances affecting land. His reasons, which will not bear compression, will be found in paragraphs 25 to 27 of his first memorandum.

33. The Honourable Mr. Hope writes: "Registration on which the Deccan Rayats Commission set much store is just undergoing a change of system" (the change, namely, from the employment of the kulkarnis to that of stipendiary Registrars), "of the results of which I am not at all sanguine."

34. In my opinion the cumbrous and expensive process of registration is altogether misapplied to petty money transactions and contrary to the first principle of the Relief Act, which is to save the cultivator from paying more than is necessary. A system of licensed bond-writers might be of some slight use if suitable persons could be found in nearly every villager. But no permanent good is to be expected from it when the bond-writers are of the 12-rupee class who will not long remain clear of local influences; and when these persons are sparsely scattered through the country, the system becomes a grievous burden. It is not worth while that it should be inflicted on the people, its use in any case being superfluous, now that the Courts are not bound by the actual terms of a bond, and futile whenever borrower and lender choose privately to deceive the Registrar and enter in the bond a larger sum than that really advanced.

35. All opinions concur in favour of the retention of compulsory registration of instruments affecting immoveable property, and if the law is altered as regards money-bonds, the location and pay of Registrars will be a subject for consultation with the Inspector General of Registration.

Management by Collector of judgment-debtor's land.

36. The Secretary of State next specifies for opinion "the management by the Collector of a judgment-debtor's land."

It will be remembered that under the General Code of Civil Procedure the land of a judgment-debtor can be made over to the Collector with a view to the avoidance of its sale by mortgage or lease with premium, or to the conduct of the sale, if unavoidable, in the best interests of the seller. By the Relief Act the sale of land was absolutely prohibited, but it was provided that the Collector should manage the surplus lands of a judgment-debtor for seven years, and transfer the profits to the creditor.

It has only to be said that this provision has been proved quite inoperative though great attention has been paid to it.

The same may be said of the Insolvency provisions.

"General principles and operation of the Act."

37. As regards the general principles and operation of the Act, the Secretary of State has asked for the opinion of this Government *seriatim* on the objections made against it as thus stated:—

(1) That in consequence of its errors a creditor of an agriculturist cannot recover a debt justly due.

(2) That therefore an almost entire stop has been put to agricultural loans.

(3) That the rayat of the Deccan cannot get on without borrowing.

(4) And hence that the effect of the Act will be to injure both the moneyed classes and the peasantry.

As bearing on the first point, the Secretary of State in his 13th paragraph suggests enquiry as to the proportion of contested to uncontested suits, the proportion of decisions favourable to plaintiffs and defendants, the honesty of defences, the general effect of agreements and compromises, etc. Answers to all these questions are to be found* in the collected papers. It would take long to repeat them, and it may be sufficient here to note that they all indicate fair treatment of the money-lenders except in regard to the encouragement of dishonest

*Dr. Pollen's paragraphs 20, 21 and 22.

defences, and dishonest attempts to recover land on the part of agriculturists. But in point of fact these questions do not touch the sense in which it can be safely asserted that a "creditor of an agriculturist cannot recover a debt justly due." They all bear on the fairness of the decrees, or agreements that are converted into decrees by the Courts, and so far the Act appears to be working as its promoters would desire; but they do not bear on the efficacy of these decrees in enabling creditors to recover their just debts. As remarked by Mr. Hope in the Legislative Council "compared with what we mean to compel a man to *pay*, the question of what we shall hold him to owe, sinks into insignificance."

38. If there is one point that has been established in this enquiry, it is that decrees are practically inoperative against agriculturists, now that they can be no longer enforced by imprisonment and sale of land. As for decree-holders' proceeding against crops, they can be, and often are, disposed of before they are reaped.

In point of fact the Relief Law may be accurately described as a law enabling the Deccan agriculturists to repudiate their debts, while assisting them to form an opinion as to how much should be regarded as debts of honour if they should be inclined to pay so much.

39. How far the cultivators are paying off these debts of honour made easy by instalments it is impossible to say. As a rule, no doubt they are honest, but they alone are now judges of the efforts and deprivations that they are bound to make and endure for the sake of honesty. Mr. Woodward writes in his 5th paragraph: "I believe the rayat is ordinarily disposed to pay debts, found on enquiry to be fairly due according to his means, and that instalments fixed by the Courts or privately are generally discharged with punctuality. The sawkar makes the most of cases where their inability to pay has kept him out of his money or where sometimes temptation to dishonesty has been too strong for the debtor. The creditors' complaint that debtors are impregnated with the spirit of dishonesty, and will pay only on compulsion, is exaggerated and untrue." But in the same paragraph he writes that the rayats "consider that they would not be justified in paying anything on account of old debts until they had made a suitable provision for their needs up till the next harvest."

40. The Judges of the three of the Deccan Districts, after consulting the Subordinate Judges, write as follows:—

Mr. Crowe, Poona: "By the provisions of the Deccan Agriculturists' Relief Act their (the sawkars') claims against their debtors are reduced to the smallest possible limits, and the recovery of such reduced claims is made almost impossible under section 266 of the Civil Procedure Code and sections 21 and 22 of the Relief Act. Almost everything possessed by an agriculturist has been exempted from attachment in execution of a decree, whereas the whole property of sawkars when pressed by their creditors is liable to seizure." Mr. Crowe also draws attention to a petition received from certain sawkars who stated "after obtaining decrees against agriculturists we are left to all intents and purposes in the same position in which one would find himself when his claim is time-barred."

Mr. Hosking, Sholapur, writes: "The amount of money now paid to the judgmenty creditors through the Court is very small compared with the amount paid in former years. In one Court, for instance, the amount paid last year was less than a sixth of the amount paid in 1875. This is the main cause of the impoverishment of the petty sawkars."

Mr. Scott, Ahmednagar: "It seems clear that now the sawkar is practically prevented from enforcing a decree against an agriculturist, he has only the good faith of his debtor to trust to, and the forbearance and indulgence of the sawkars during the famine and bad seasons is now met by contumacy on the part of the debtors, who not only do not pay the decreased amounts found due by the Courts, but refrain from paying the instalments ordered by decrees. In some cases they have gone so far as to decline even to sell their crops to their creditors in open market, and have in fact set them altogether at defiance."

41. Four members of the Committee (Mr. Woodward, Mr. Naylor and the two sawkars, Mr. Natu and Mr. Gadre) "are convinced that the exemption of immoveable property from attachment and sale works great injustice to creditors who are really debarred from recovering even the reduced sums awarded to them by the Courts after the strict enquiry into their claims necessitated by the Act." But the other four members, Mr. Robertson, Mr. Moore, Dr. Pollen and Mr. Ranade, "deny that the alleged injustice to creditors from the present law has been demonstrated by evidence, and, unless proved, they believe they are justified in doubting its existence."

42. Mr. Lee-Warner goes further. He believes that "good debts" as distinguished from mere ancestral and paper debts due by insolvents "can be recovered as easily if not more easily than before," and, as a test of the effect of the new law on the prosperity of the

village money-lenders, he thinks the license-tax receipts from them have increased rather than diminished. On this point Mr. Lee-Warner has detected a material defect in Mr. Woodward's statement of the license-tax receipts which led to the inference that they had fallen off by nearly a lakh and three-quarters in consequence of the Relief Act, but it has been estimated by the Revenue Department that the falling off on this account was about 10 per cent.

43. Mr. Lee-Warner further contests Mr. Woodward's statement that the sawkars "are so convinced that justice cannot be obtained under the Act, that they are willing to compromise debts at one-half or less their actual ascertained amount." In his opinion "the Deccan Relief Act has no bearing whatever upon the rate of composition which money-lenders will accept. They will take less in a Native State where the law is uncertain than in a British village affected by the Relief Act." This opinion is founded on experience gained in connection with taking up land for irrigation works, and the settlement of compensation to be paid by Government, and therefore seems to afford no guide as to the composition that the creditors would agree to when they can look only to the resources of their rayat debtors for payment. I can only state that in all the conversations I have had with native gentlemen I never heard a doubt expressed as to the readiness with which the money-lenders generally would compound for a ready-money settlement of their claims if they got the chance.

44. What however is the actual condition of the village money-lenders? The Judges of the affected districts all say that the small money-lenders as a class are in very embarrassed and greatly reduced circumstances, and approaching insolvency, which in some cases has been reached.

45. The next allegation on which an opinion has to be formed is that an almost entire stop has been put to agricultural loans.

Mr. Woodward writes in his 9th paragraph: "There can be no doubt that a shrewd blow has been dealt to the trade of money-lending. Approximately it may be asserted that transactions between sawkars proper and agriculturists have been reduced 75 per cent. of their amount previous to the famine years." Dr. Pollen writes, paragraph 65: "The rayat's credit has in fact been immensely curtailed." Mr. Lee-Warner (final paragraph) while holding that a sound business is still open to the money-lenders, adds as regards the actual state of things that "there is no proof that they have absolutely ceased to lend." Mr. Hope writes, paragraph 15: "There is no evidence whatever either that they have ceased lending, or intend to do so." The contraction of credit that has taken place is, he holds, just what was intended.

46. Lending of course continues on good security, moveable or immoveable, and in exceptional cases on mere personal security. Some lending also continues for the purpose of keeping old claims alive. But, speaking broadly, it may, I think, be safely said that the system of lending to poor cultivators on the security of crops to come, which has hitherto been regarded as essential to their permanent welfare and to the punctual payment of the Government assessment in good and bad seasons, has been entirely suspended. This at least is the impression of general belief that I have gathered from conversation with native gentlemen and is what is to be expected under existing conditions.

47. The third allegation is that the rayats cannot get on without borrowing, and in this connection the Secretary of State remarks: "if they cannot, there will have been difficulty in realising the revenue, and a great deal of land will probably have been thrown up." Now there has, in fact, been no difficulty in realising the revenue, and no land appears to have been thrown up in consequence of inability to borrow. The great body of rayats have so far got on without borrowing. But this may be attributed partly to the exceptional run of fair seasons since the Act has been in operation, and partly for the seasons have not been good in all parts of the Deccan, to the fact that the majority of land-holders also go out for work as day-labourers, while the demand for labour has been good, and food cheap. In fact, speaking generally, the poorer rayats may be as much regarded as day-labourers who hold land of their own, as land-holders who earn wages by labour, and instances have been found in which from want of funds they have made no attempt to cultivate their lands, while paying the assessment from their wages or hire of their carts.

It is often asked—why prop up insolvent rayats and artificially prevent them from sinking to the position of day-labourers? But the fact is they are day-labourers already, only it is the pride and comfort of their lives to have some land of their own where they leave their families and constantly return, and their land is generally worth too little for men with capital to want. They are insolvent only in the sense that labour from day to day is the chief source of their income.

When, however, bad seasons are general and applications for labour exceed the demand, and wages fall and prices rise, it may be expected that the need for loans will again be apparent.

So far also as pure agriculture is concerned, the available information affords no reason to doubt that through good years and bad years it cannot be maintained by poor cultivators without the aid of loans. And there is a large class of cultivators, such as those of the true Maratha caste, who keep their women in seclusion, who think it beneath them to go out for work. Mr. Jopp has satisfied himself that even members of this class will do so on emergency, though they are too proud to own it, and it is said that their secluded women will work on their fields after dark; but that members of this class should have to take to day-labour implies distress and lowering of status, and a law which obliges them to do so cannot long be regarded as having a beneficial or popular effect so far as they are concerned.

48. The last allegation as a deduction from the previous ones is that the effect of the Act will be to injure both the moneyed classes and the peasantry. The remarks that can be made on this head have for the most part been anticipated.

49. It will be seen that Dr. Pollen, Mr. Ranade, Mr. Robertson, and Mr. Moore deny that injustice to the money-lender has been proved, meaning possibly that they have suffered no more than they deserved; while Mr. Lee-Warner explicitly denies that the rayats have been relieved at the expense of the money-lenders, and even seems to hold that the latter are better off than they were before.

50. I can understand without sharing the view that the extinction of the existing money-lending class is expedient, and the view that the money-lenders who have long had the rayats down should have their hands held for a certain period; but the view that they are not injured by the Act is, I think, an impossible one, inconsistent with the ascertained condition of things and contradicted by all the evidence obtained, though that may not yet amount to conclusive proof.

51. As regards the rayats I have lost no opportunity of conversing with native gentlemen on the subject of the Act, and I am bound to say that the general feeling is one of incredulity as to its eventually benefiting them. It is easy to see two ways whereby its intended benefits may be missed,—(1) the rayats unable to borrow may be obliged to sell their crops at a loss before harvest to speculative purchasers, a practice already prevalent. A letter from Mr. A. B. Fforde of the Revenue Survey, No. 40 of 13th November last, gives very full and opportune information on this point; (2) they may be obliged to sell their land outright to the money-lenders, remaining on it as mere labourers or tenants-at-will. Certainly the practice of such sales does not seem to have gained ground, but besides the good seasons of the last three years which have enabled the rayats as yet to hold their own, the sawkars may have been slow to alter their former policy which was against the actual purchase of ordinary dry crop land; and another explanation suggested has been that they have lost all confidence in the law. They think that if they bought lands, they would not be safe against a new law annulling their purchases.

52. As regards the opinion of the rayats themselves it must certainly be admitted that though they are not unanimous, the great majority are as yet highly pleased with the Act and inhabitants of other districts have begged that it may be extended to them. But the probability is that they are pleased with particular portions of it, and if their inability to obtain loans as formerly is not a source of discomfort and anxiety to them it must be, as stated by Mr. Woodward in his 23rd paragraph, that "while grateful for their release from the clutches of the sawkar they naturally look to Government to replace him when the evil day shall arise."

The same idea that, while the Act has been beneficial to the rayats as yet, some undefined assistance on the part of Government will be necessary to save them from eventual harm is thus expressed by Dr. Pollen in his concluding paragraph. "The sawkars would probably stand aloof during a time of distress just as they are doing at present; but Government must be prepared for this. Almost any sacrifice would be preferable to forcing the rayat back into the toils of the sawkar from which he is just now learning to emancipate himself. Once freed from debt I expect that he will be able to get on without borrowing in ordinary years, but in periods of scarcity or distress he will have to look to Government for a helping hand unless in the meantime the relations of the lending and borrowing classes shall have adjusted themselves on a more rational and satisfactory basis than that on which they rested in times past. After all under a rayatwari system, the cultivators are the direct tenants of Government, and the prosperity of the latter is bound up with that of the former.'

53. The form of Government help alluded to in this passage is no doubt "relief works." The meaning seems to be that whereas Government already opens relief works in times of famine or very exceptional distress, they must now be prepared to do so as a systematic corrective of the vicissitudes of agriculture in the Deccan. This points to a sort of Poor Law at the expense of the general tax-payers.

54. It was partly because of the disclosure of this prospect, and partly because of the discovery that the special provision in the Relief Act for the protection of the equitable rights of the money-lenders was a dead-letter, that I reviewed in my former note the measures that appeared to be possible for ensuring to the cultivators sufficient facilities for borrowing in future, and to the money-lenders an equitable liquidation of their existing claims. It remains to take note of the opinions that have been received on the courses suggested for consideration. They may be thus stated:—

(1) A composition settlement of the debts of each indebted agriculturist on the print ciple of repayment by instalments spread over from 20 to 30 years, and collected by Government on behalf of the creditors as arrears of land revenue. In other words, an enhancement of assessment for a certain period on lands held by particular persons with a view to the excess over existing assessment being applied to the payment of their debts.

(2) The same, with this difference that the Government would in the first instance advance the money necessary for paying off the creditors, and the excess assessment would be taken for its own re-imbursement.

(3) The lending of money by Government whether for liquidating old debts, or meeting new needs on the responsibility of village communities.

(4) Tagai or loans by Government for agricultural purposes.

(5) Agricultural Banks.

55. In regard to plans (1) and (2) the Committee remark on the "minute protracted and very costly enquiries" that would be involved; on the risk that the general tax-payer would be put to if public money were advanced for the liquidation of the debts of the (so called) insolvent debtors; on the certainty that such debtors if freed from debt would forthwith contract fresh debts; and on the absence of any necessity for helping those who are solvent. Here however Mr. Woodward differs. In the case of about 40 per cent. of the rayats he thinks that money might be most advantageously advanced by Government in liquidation of their debts as ascertained, without any settlement enquiry, by the suits now being brought before the Courts.

The Committee however (paragraph 23) so far approve of the idea of the recovery of debt by fixed instalments as additional to the Government assessment, that they advocate a provision of law whereby this course could be followed in execution of *any particular decree when both parties to it so desire.*

Mr Lee-Warner thinks any grand scheme of liquidation of debts, condemned by financial considerations, a bad precedent, and inapplicable to a tract of country subject to famine. "Recurring famine," he writes, "would either interrupt the work of liquidation or, if it did not do that, would throw down the Settlement Officers' work as ruthlessly as the tide of the sea upsets heaps of sand."

Mr. Hope (paragraphs 16 and 17) sees no particular necessity for further measures of relief, and believes "that if present conditions are unchanged, and the severe strain of scarcity or famine do not supervene, a few more years will see the rayats fairly free from debt and able to take care of themselves. The money-lenders will then be a more cautious class, but no rayats reasonably entitled to borrow will be unable to do so."

I concur with the Committee in deprecating the enormous labour and expense involved in a general enquiry into debts, and the risk of public money in any general liquidation, but I think that *if the execution provisions of the Relief Act are to remain unaltered*, creditors should be allowed to move for a composition settlement in the case of any landholding debtor with a view to recovery of the sum compounded for by instalments with the assessment. Unless this is done they will have no means of laying their hands on any portion of the debtors' crops. The debtor might surrender, but must of course be debarred from selling his land till the debt is paid.

56. The plan mentioned as (3) of loans by Government through the village communities, which was suggested by myself, has been universally condemned except by Mr. Lee-Warner in connection with tagai. Mr. Hope, paragraph 18, believes it to be "totally

unworkable in a rayatwari country at any rate." I am grateful to Mr. Justice West for the thorough examination of which he thought it deserving. He has carefully pointed out the rocks and shoals that he thinks would certainly wreck it if launched on the sea of experiment. I cannot contest the justice of Mr. West's arguments except by saying that if the people really desired to make the scheme succeed, and no one can be sure how they would take it, they would submit to such checks and conditions as would possibly enable it to be steered clear of the dangers to which attention is so forcibly directed. I am however far from thinking it desirable that the Government should enter itself in the money-lending business except strictly in its landlord capacity, and suggested the scheme merely as a possibility for supplying a want, if the law makes the trade of lending money to agriculturists impossible.

57. Next, as regards tagai or advances for purely agricultural objects, the Committee strongly recommend the extension of the system on a more liberal scale, but they do not attempt to solve the problem of how to offer these advances in an acceptable manner, and how to make Government officers willing to incur the necessary responsibility for their recovery. Mr. Lee-Warner however writes that he would much like to see the experiment of village responsibility tried in this connection. There is much in it, he adds, "which deserves a fair trial, and the conditions under which tagai advances are given seem to me specially favourable to the experimental scheme sketched" in my previous note.

58. Lastly, as regards Agricultural Banks, Mr. Lee-Warner has recorded an unfavourable opinion, and, even as regards the experiment in one taluka, is opposed to the form of the proposed assistance from Government. The Committee, paragraph 30, see no objection to the experiment being tried on a limited scale, and in a limited area in the manner intended, but decline to express any opinion as to the probable result. Mr. Hope, paragraph 18, reserves his final opinion until the matter comes before the Legislature "merely remarking that the objections to recovery by the State and to competition with private bankers are serious, and that the practical working is likely to be far more difficult than seems to be expected."

The subject of Agricultural Banks was purposely left out of the legislation regarding advances to agriculturists which resulted in Act XIX of 1883. It is now being discussed between the Government of Bombay and the Government of India, the last communication from Bombay being letter No. 5548 of 26th July last. The matter, it is believed, has been referred to the Secretary of State. In November last the Committee of the Bank Promoters suggested that, pending its final and possibly distant settlement, a modified scheme of action might be tried without incurring the preliminary objection of an expensive Commission of Enquiry, namely, for providing loans on easy terms to those agriculturists who have already obtained decrees in redemption suits of which they are prevented from taking advantage by want of funds, and difficulties in raising new loans which they experience "by reason of their having sued their old sawkars." It is estimated that while 4,000 decrees have been passed in redemption suits, the mortgagors have been able to recover their lands in about 25 per cent. only of the cases, and the proposal is to advance loans in those cases of the remaining 75 per cent. in which the debt decreed does not exceed from 50 to 75 per cent. of the value of the land.

As already noted Mr. Lee-Warner and Mr. Woodward think that such advances as are contemplated might properly be made by the Government itself as Tagai.

In my opinion a solution of the Agricultural Banks' problem will be also a solution of the Tagai problem. If rayats can be induced to borrow from the Banks, they will equally borrow from Government, and could do so at less interest. But Government may not be prepared to make Tagai advances for (1) the redemption of land already mortgaged, and (2) raising money by future mortgages and, if so, ample room will be left for the Banks' utility. But they can be of no use in any scheme for liquidating the debts of the vast number of rayats who cannot give sufficient landed security, or for taking the place of the village sawkars in supplying the rayats, constant need for petty accommodation, nor can they be of any use in compensating existing creditors for their deprivation of the power to compel payment of their just dues.

The Agricultural Banks' scheme will be disposed of on its own merits, but the fate of the Relief Act is of the greatest importance to its success as it has been framed on the supposition that the Law will give the Banks exceptional facilities for recovering debts, while denying the ordinary facilities to their competitors.

59. Passing the question of attempting to supplement the Relief Act by remedial action on the part of Government, there is nothing left but to note opinions as to whether

the defects of the Act itself are sufficiently serious and well established to call for amendment without waiting for further experience. This has been done in regard to its Conciliation and Registration provisions, but remains to be done in regard to the far more essential provisions which relate to the power of making a debtor pay his debts.

60. The members of the Committee are unanimous in holding the Act to be defective in this respect. But they are equally divided on the question of the time when the defect should be remedied. Dr. Pollen, Mr. Ranade, Mr. Robertson and Mr. Moore desire that the existing execution provisions should remain unchanged for a few more years when "old scores will for the most part have been settled, and the rayat will be comparatively free from the burden of indebtedness," and they require proof to make them believe that the process under existing conditions involves any injustice to creditors. Mr. Woodward, Mr. Naylor and the two sawkar members are convinced that "the exemption of immoveable property from attachment and sale works great injustice to creditors who are really debarred from recovering even the reduced sums awarded by the Courts after the strict enquiry into their claims necessitated by the Act." They can find "no ground for further prolonging this injustice." The sale of a debtor's land, it will be remembered, is now hedged in with precautions by Sections 320 to 327 of the Civil Procedure Code.

61. There is difficulty, no doubt, in forming positive conclusions on the operation of the Act, but one thing at least is certain, namely, that it is different from what the Legislature intended it to be. No principle was more clearly accepted when the Act was passed than that while the arm of the Law should no longer be at the disposal of creditors for the enforcement of unrighteous bargains, still they should all the more receive full and effective aid in obtaining what is fairly due to them, and reasonably recoverable. For this purpose a certain provision was entered in the Act and called its key-stone. This has proved a dead letter. Mr. Hope writes (paragraph 13) that while he regrets that no effect has been given to it, still the money-lender is getting his compensation "in other ways which were unanticipated, or not expected to be so weighty." These other ways, so far as I can see, are (1) conciliators are often favourable to money-lenders, (2) the cutting down of claims by courts is moderate, (3) rayats object to be treated as insolvents. Not one of these ways touches the ability of creditors to compel payment of what is fairly due to them.

62. Besides the question of the justice there is the question of the expediency of this state of things. Mr. Hope (paragraph 16) compares it to a leaven which has put rural society in a ferment, and he is satisfied that the action set up is natural and healthy. But experience has not yet corrected his previous opinion, when the Act was before the Legislature, that unless ample provision were made for enforcing just decrees, "the destruction of the rayat's credit, or his bondage to secret and exorbitant agreements must ensue" or again "his borrowing even for reasonable purposes within the limit of his true means will become most difficult, while the alternative of absolute non-transferability of land, or eviction and a Poor Law will stare us in the face."

63. The only argument appears to be that we now have in the Deccan Districts a condition of things which works well in Native States. But how far is this a correct statement? Information on this point as on every other is found in Mr. Hope's original speech. He stated "Imprisonment for debt is not allowed in Morvi, nor apparently in Bhavnagar. In Baroda it is forbidden altogether during the cultivating seasons, and very sparingly used at other times. In Hyderabad it is reserved for cases of contumacy and fraud. As to the sale of a rayat's land and house for debt, both are exempt in Bhavnagar, and the former (if not both) in Morvi. In Hyderabad the sale of either is said to be resorted to in extreme cases only. In Baroda only such portion is saleable as may be in excess of what is indispensable for the residence and support of the rayat and his family, and sales are not favoured by the Courts." When then it is further considered that the native systems of collecting land revenue are far more elastic than the British system, while doubtless the same may be said in regard to the administration of justice, it appears to be far from clear that the state of things established in the Deccan Districts is the same as in Native States. There seems in the latter to be at least some power in reserve for compelling the payment of debts which may be sufficient to maintain the people in habits of honesty, while under the Relief Act such power is practically non-existent.

64. To my mind it appears that the indefinite continuance of the Act with its present execution provisions is indefensible, and its definite continuance for a few years more is not defended by any argument used by those who have advocated that course. The mere nominal

and ancestral debts of the rayats could not be cleared off by easy instalment in half-a-century. And also the fair debts, connected as they are in a great measure with the improvement of land, and the taking up of waste land since the survey system has been in force could not be cleared off in any inconsiderable period. The idea of this object being at all nearly effected in a few years can mean nothing short of the repudiation of just debts.

A defence however might be put as follows, and possibly this is meant:—the money-lenders for many years have ground down the rayats assisted by our Courts regardless of equity. In the future the rayats must, like seamen and minors, be protected against their own ignorance and imprudence, but they must be rigidly compelled to pay what they fairly owe. Also before the new system is finally established it is fair that they should have a breathing time during which they will be obliged to pay no more than suits their convenience. It may be expected that in this time they will become richer, and learn through self-help and mutual help to do without the money-lender as far as possible, and they will also be in a position of advantage for settling old scores. That they should do much in the way of liquidation is not to be counted on, being too contrary to human nature. Then, when the money-lender is again armed with the coercive powers of the law they will have broken from their old habits of apathy, and submission and be better able to hold their own than in times past.

But it may be argued against the course in question that it must be (1) demoralising to the rayats, and (2) unjust to the great body of money-lenders who, trading on money borrowed by themselves from others, must be ruined by a prolonged suspension of the receipt of their dues or at least a great part of them which has already been in force for four years. And (3) if bad seasons come while the Act is in its present force, there may be mischief and discontent. It is in fact most fortunate that the seasons have hitherto been good, and most desirable that matters should be put on their final footing before the money-lenders have their time of retaliation, and are able to force the hand of Government.

65. On one point I differ from the members of the Committee who desire that the restrictions of the Relief Act in the execution of decrees should be at once removed. They refer only to the sale of immoveable property and would not restore to judgment-creditors in the Deccan the power of imprisoning their agriculturist debtors. Strong opinions, it is true, were given against a law of imprisonment for debt in the debate on the Civil Procedure Code, but last year the Chief Justice and Judges of the High Court, the District Judges and the Subordinate Judges of this Presidency were almost unanimous in objecting to its abolition. It was found that the Law was little resorted to, but its existence was potent in keeping people to their obligations. Its abolition, as expressed by a Subordinate Judge, "would be a very heavy blow to the money-lending class, and perhaps a heavier one to the borrowing class. The power of borrowing is to the poor in this country a corrective of the chances of fortune, and the loss of credit would destroy their peace of mind. As long then as the general law permits imprisonment for debt, I cannot see why any distinction should be drawn between agriculturists and other debtors, especially, if reality is to be given to the great principle of the Relief Act as first enunciated, namely, that while the liabilities of agriculturists are to be controlled by Courts of Equity, and made easy to them by instalment decrees, they should be compelled to pay what they fairly owe. No one can now be sent to jail without the opportunity of avoiding it by a declaration of insolvency, and no one can be kept in jail on any decree for above six months.

The power of selling the land of an agriculturist debtor, and putting him into prison was taken from creditors because the Rayats Commission of 1875 found that it was subservient to extortion. But since 1875 material alterations have been made under both heads in the Code of Civil Procedure, and with the addition of the equitable clauses of the Relief Act I submit that enough would have been done without going the extreme length of withholding from the rayats' creditor assistance that is found indispensable in dealing with debtors of any other class.

66. It may readily be admitted that the best interests of the rayats required that the credit they enjoyed before the passing of the Relief Act should be curtailed. But would not curtailment follow on the equitable clauses which enable Courts to set aside contracts, and order payment by instalments? Whether such curtailment would be enough, or too much, especially in regard to mortgages, is to my mind the true problem to be solved, but it will not be approached as long as it is overlaid by the execution provisions.

Extension of the Act to other Districts.

67. In conclusion Mr. Hope writes "I am in entire accord with Dr. Pollen and Mr. Woodward as to the desirability of extending the operation of the Act. Certain portions of

it are well suited not only to the whole Bombay Presidency, but to all India. But the condition of Khandesh, Nasik, and Kaladgi urgently calls for relief, and I should be glad to learn that the Secretary of State had sanctioned the passing of a brief Act authorizing the Local Government to apply to those districts all, or such portions of, the Deccan Agriculturists' Relief Act as it thought fit." Dr. Pollen wrote, however, "I do not advocate the extension of the summary jurisdiction provided for in Chapter II or of the system of revision in lieu of appeal, or of the 'conciliation,' 'village munsif' or village registration systems. What I regard as essential is that the Courts should have enlarged powers enabling them to modify inequitable contracts, and to deal out substantial justice between man and man." Where I cannot concur with Dr. Pollen is in attributing "unequalified success" to the provisions of the Act which make the payment of just debts practically optional with the debtor. With this addition to the exceptions I think that the Relief Act might advantageously be re-enacted with power to the Government to extend it to any district in the Presidency, and the best form of re-enactment would be a few additional sections to the Code of Civil Procedure.

December 1883. C. GONNE.

Demi-official note addressed by the Chief Secretary on 18th January 1884 to Dr. A. D. POLLEN, Mr. J. R. NAYLOR and Mr. T. H. STEWART. No. 1

I send herewith a copy of a second note I have written summing up the opinions collected on the working of the Relief Act. It now remains for Government to determine their recommendations in answer to the Despatch of the Secretary of State.

The view they are disposed to take is that the Act goes decidedly too far in its denial to the creditors of agriculturists of effectual aid in the compulsion of payment of debts, and that in this respect it calls for very speedy amendment. They do not, however, go the whole length of my own views on this point, *e.g.*, they are not disposed to restore the power of imprisoning, and, as regards the sale of immoveable property, they think it should be permitted only when the cultivator is so hopelessly in debt, owing for instance 25 times the assessment on his land, as to make it undesirable that he should be continued by artificial arrangements in the possession of land which had much better pass into the hands of some one better able to cultivate it with advantage.

The chief way, however, in which they think that aid might be given to the creditor is that when he has gained a decree and payment has been ordered by instalments and the debtor has failed to pay any instalment, the Collector should be empowered to realise the instalment as if it were so much additional land revenue under the Land Revenue Code. The blot in the present arrangements is thought to be that, whereas a debtor can dispose of his crop the moment it is reaped so as to put the whole of it practically beyond the creditor's reach or indeed to dispose of it altogether before it is reaped, the creditor has no power to place his hands even on such portion of it as would meet an instalment of his debt.

Before, however, finally adopting these views the Government desire to know what you think of them and in what form, having regard to the provisions of the Civil Court from section 320, which deal with the agency of the Collector in executing decrees against land, they could best be thrown.

Reply from Dr. A. D. POLLEN, dated 2nd February 1884.

I now reply to your demi-official note of the 18th ultimo which only reached me on the 23rd. No. 1

In it you inform me that Government are disposed to take the view that the Relief Act "goes decidedly too far in its denial to the creditors of agriculturists of effectual aid in the compulsion of payment of debts and that in this respect it calls for speedy amendment," and you then indicate the directions which it is considered the amendment should take, *viz.*, (1) the removal of the present restrictions on the sale of immoveable property belonging to debtors who are hopelessly involved, and (2) the recovery of decreed instalments through the Collector's agency by revenue process. The blot in the present arrangements is, you add, thought to be that, whereas a debtor can dispose of his crop the moment it is reaped so as to put the whole of it practically beyond the creditor's reach, or indeed can dispose of it altogether before it is reaped, the creditor has no power to place h is hands even on such portion of it as would meet an instalment of his debt.

Before expressing an opinion on the proposed amendments, I would wish to make a few general remarks. You are aware from what I have previously written on the subject that I am

personally opposed to any immediate change being made in the execution provisions of the Act and that I do not share the view that it goes too far in the denial of effectual aid to creditors. I concurred with those members of the Committee who recommended that the existing provisions should remain unchanged for a few more years, but I would object, even after a few more years, to any change unless by that time it were satisfactorily demonstrated that the present law entails substantial and permanent injustice on the creditors. In your printed note you remark that the recommendation for the continuance of the existing provisions for a further definite period is not defended by any argument on the part of the members of the Committee who advocated this course; but I would wish to point out that in my former reports I have adverted to various considerations which seems to me to suggest, if not to supply, the desiderated arguments. The most conspicuous effect of the Act hitherto has been to restrict credit within just limits, to make the rayats more self-helpful and self-reliant, and to demonstrate that, when once they are relieved from oppressive conditions, the necessity for continual resort to the money-lender no longer exists to the same extent as formerly. It appears to me that, when proposals for a change are made, the mischiefs which the Act was designed to guard against are not sufficiently kept in view. These mischiefs arose in a great measure from the fatal facility for borrowing which formerly subsisted, from the anxiety of an ever-increasing class of petty dealers to embark in the trade of money-lending and from the easy methods provided by the action of our Courts for perpetuating a condition of indebtedness leading to the depression and enslavement and consequence discontent of the people. For proof I would refer to the Report of the Deccan Rayats' Commission and the older annual administration reports of the Collectors in the Deccan districts, and by way of contrast I would point to the reports of the same officials at the present day from which the old complaints of the rapacity of the Marwadi, the injustice worked by our Courts and the grinding poverty and depression of the rayats are now conspicuous by their absence. The questions that trouble me are—Should the gains we have acquired be lightly abandoned? Is it wise or just to revert wholly, or even partially, to a system that was so loudly and universally condemned? It may be well to enquire somewhat more closely into the reasons of the change that has occurred. We have all heard of the great addition to the rayats' credit given by the introduction of the survey system, of its sudden inflation about the time of the American War and of its subsequent contraction, but I would ask more particularly what were the reasons why under the former system the sawkars used to lend or appear to lend so freely, and the rayats continued to renew old debts and contract new ones, and why under the Relief Act the very opposite conditions prevail. My answer is that the far-seeing and quick-witted money-lenders, relying on the ignorance and poverty of the rayats and on their invincible repugnance to be divorced from their ancestral lands, perceived that by making a skilful use of the machinery of our Courts they could in process of time become the virtual owners of all the most valuable land in the country and the real, though not nominal, owners of the less valuable, yet not wholly valueless, land. This they expected to effect by perpetuating the rayats' indebtedness, ever adding to the amount of their paper debt, and then, by means of threats of imprisonment and eviction, keeping them in a state of depression bordering upon serfdom, thus securing to themselves all the surplus produce of the soil, only the barest pittance being left to the producers. On the other hand, the rayats, to begin with, were more or less burthened with ancestral debt: then they incurred fresh debts; and then, once involved, constant borrowing became to them an inevitable necessity, for, having nothing of their own and their crops belonging to their sawkars, they had to borrow from time to time for all the necessaries of life. This was the very condition of things the sawkars liked. Now under the Relief Act everything is changed. The sawkars are unwilling to make fresh advances, and they are powerless to extort renewal bonds; in fact they are losing their hold over their quondam slaves. This is due to the various provisions of the Relief Act, but principally to its execution provisions, which restrict the powers of imprisonment and sale, for the creditors can no longer count on reaping all the future fruits of the rayats' toil. The rayats, on the other hand, are unable to borrow as freely as they used, because the sawkars are unwilling to lend, and being unable to borrow, they are forced to get on as best they can without borrowing. They find to their surprise that this is possible, and in this way they are learning valuable lessons of self-denial, thrift, self-help, and of combination for mutual aid. In short, the old system led to increase of indebtedness, poverty and depression, while the present system produces distinctly opposite effects. Such at least is my belief, the result of my own experience. The experiment, no doubt, is still in progress, but I would deprecate any move which might tend to interfere with the natural working out of a problem so full of economic interest, and I think that any change, at the present moment at

least, would be inopportune. My contention is that the existing law causes very little real injustice to the creditors, and that its continuance would work towards minimising day by day whatever degree of injustice may have been inevitably caused at its inception. A very large proportion—I believe considerably more than half—of the obligations which had been contracted before the Act came into force have now been discharged by settlements made privately, or through the Courts or through Conciliators, or have become barred by lapse of time; and the liabilities that have been since incurred may be taken to have been contracted with reference to the existing provisions of the Act, the contracting parties knowing that the land could not be made liable for simple money debts. The creditors would thus get more than they had in view, were any change made now in the execution provisions of the Act. Even as the law stands the restrictions on the sale of land are only partial. Land can still be sold in execution, if the parties contract that it may be sold. The creditors have little just cause to complain of the present law; they had entered on a course of speculative dealings with persons to whom on sound principles of trading credit should not have been given, relying blindly on the continuance of a law that wrought havoc among the rayats; but they had no right to reckon so surely on its continuance. At the most they had an *expectation*, which must be distinguished from a *right*. Formerly they had it all their own way and made full use of their opportunities; now they complain because Government have stepped in and prohibited the imprisonment of the rayats and the sale in execution of their land, unless specifically pledged. I think that the effect of the execution provisions of the Act in preventing the recovery of decreed debts has been much exaggerated. The true cause of the difficulty is the proverty of those rayats who become judgment-debtors. It is not till a rayat becomes hopelessly embarrassed that he is sued in Court, and the object of suing him in the majority of cases is simply to keep the debt alive in the hope of better days arriving. In the case of solvent or fairly solvent rayats there is no reason to think that the existing provisions of the law are insufficient, but in such cases we have little or no knowledge of the modes in which decrees are executed. As a rule execution is had out of Court and in a variety of ways arranged between the parties themselves. The total number of darkhasts presented to the Courts is very small compared with the total number of awarded claims, and if we compare the statistics procurable as to the execution of decrees in the Deccan districts with those in other districts similarly circumstanced, I think that very little difference will be observable. My next annual report will contain all the procurable information on this point. The fact that no use whatever has been made of the provisions of section 22—the keystone of the arch—seems to me to supply a strong argument in favour of my views. If dishonest judgment-debtors possessed land capable of yielding more than enough for their bare maintenance, is it possible to suppose that creditors would have abstained from proceeding against the surplus in the manner provided? They do not use this power against the better classes of debtors, because such persons satisfy their demands in other ways; they do not use it against the poorer classes, because it would be useless to do so. The question then seems to be narrowed to this—are we to go back to the old system, which made the poorer debtors practically slaves—or should we go on with the experiment, already commenced, which promises to restrict credit within proper bounds and to reduce, if not to extinguish, the total mass of indebtedness? Then again it is to be noticed that the complaints against the present system proceed from interested parties, and that there is nothing in the nature of positive proof. It is not safe to rely on impressions produced by conversations with persons who, however respectable, necessarily sympathize with the money-lending and would-be landed classes. The "blot in the existing arrangements" of which you speak is only *supposed* to exist, but I venture to urge that instances of rayats making away with their crops or disposing of them before they are reaped in order to defeat their creditors are very rare. If such a practice were common, individual instances would often be brought to the notice of Government officials, and complaints would be much more frequent than is found to be the case. There is no reason to think that the rayats cannot borrow within their true means. Money-lending continues to go on, but on different principles: it is only people without credit who cannot borrow as they used. At the same time there has been a great diminution in the total amount of outstanding debt. The consequence of any retrograde change in the execution provisions would, I greatly fear, be to restore the former condition of things, to encourage speculative lending and reckless borrowing and to deprive the rayats of all incentives to honest exertion, thrift and self reliance.

With these observations, which I have tried to compress as much as possible, I proceed to the more immediate subject of your letter. Holding the views I do, I cannot approve

of the first proposal relating to the saleability of land in execution in cases where the cultivator is so hopelessly in debt—owing for instance 25 times the assessment on his land—as to make it undesirable that he should be continued by artificial arrangement in the possession of land which had much better pass into the hands of some one able to cultivate it with advantage. The consideration here held in view involves, as it appears to me, a question of policy or administrative convenience, and has really nothing to do with the question of justice or injustice to the creditor. The object is to get rid of the useless cultivator; but this object is much more likely to be attained under the present system than by making the land saleable. If the rayat, having broken away from dependence on the sawkar, finds himself unable to stand on his own legs in times of scarcity and distress and is too insolvent to get help from Government in the way of tagai, he would have eventually to throw up his land or be sold up by the Revenue authorities; whereas, if the law were changed and he became once more dependent on the sawkar, the latter would keep him alive in a bad season in order to squeeze him dry in the good ones sure to follow, and he would still remain an unprofitable burden on the soil. Again, even though the land were made saleable in the manner proposed, it does not follow that it would be sold. Land belonging to a cultivator of the class referred to would, as a rule, be of a poor description, such as the creditor would be unwilling to buy or work at his own risk. The latter would prefer in the majority of instances by *threats* of attachment and sale to keep the nominal owner in possession as his rack-rented tenant-at-will. I am inclined therefore to think that the proposed plan would miss its mark. I foresee moreover many practical difficulties in the way of carrying out the suggestions which also seem to involve some anomalies. The general rule, as I gather it from your letter, would still be that an agriculturist's immoveable property is to be exempt from sale except when specifically pledged. Then two exceptions would have to be grafted upon it—(1) when a debtor is involved beyond a certain point to be arbitrarily fixed; and (2) when an instalment has remained unpaid, in which case revenue process, ending perhaps in sale, would be resorted to. The following questions then at once arise—why should a poorer debtor receive harder measure than a richer and perhaps less honest debtor? Where should the line be drawn to distinguish a hopelessly from a moderately involved debtor, and how can the imputation of arbitrariness and harshness be avoided? What authority is to decide whether a debtor is hopelessly involved or not, the Court or the Collector? Is the enquiry to be made by the Court or other authority of its own motion or on the motion of the creditor? As instalments are only granted when the debtor is supposed not to be able to pay at once, why should not a debt made payable at once be recovered through the Collector as well as an instalment of a debt? This last question touches on the second proposal, which is that the Collector should be empowered to realize an unpaid instalment of a decreed debt as if it were an arrear of land revenue. Two other objections occur to me in this connection. The plan, if adopted without limitations, would act in a partial and incomplete manner only, inasmuch as many persons who come within the definition of the term 'agriculturists' have no land of their own against which the Collector could operate, for instance, agricultural labourers and the large class of persons who cultivate the lands of others on the 'batai' or other similar systems and are not primarily responsible for the land revenue. The other objection is that it is almost certain that the Collector would be at once confronted with the problem—if instalments of judgment-debts are to be collected rigorously along with, and in addition to, the assessment, what will be left to the debtor to subsist upon? In ordinary years the poorer rayats find it hard enough to pay the assessment, and in most cases I believe it will be simply impossible for them to pay an additional rate with the same regularity. The difficulty of the Collector's position will be much increased, and I confess I cannot look upon the prospect without grave misgivings. I am therefore most emphatically of the opinion that the second proposal cannot safely be carried out except with the limitation suggested by the late Committee, namely, when the consent of both the parties is freely and understandingly given before the Subordinate Judge. It may be expected that such consent will not unfrequently be given by the debtor in order to obtain more readily the advantage of carefully adjusted instalments.

The only method that occurs to me by which the first proposal outlined in your letter can be carried into effect and made to fit in with the second proposal is to remove the present restrictions on the sale of land, except in cases where the Courts see fit to grant instalments, either when passing decree or subsequently in the course of execution proceedings. The Collector should also have the same liberty of granting instalments when the execution of decrees is transferred to him. The Courts and the Collectors would thus exercise a power of

postponing sale in all proper cases. It might be made an instruction to the Courts and Collectors not to grant instalments where the debtor is hopelessly involved. If the debtor to whom this privilege is granted fails to pay an instalment when due, his land should be liable to attachment and sale, unless the parties consent that, in future, instalments shall be collected as an arrear of land revenue. The same consent may be given beforehand at the time of granting instalments. I do not think that the provisions contained in sections 320—326 of the Civil Procedure need interfere with the introduction of the proposed changes. They will apply only in so far as they may be applicable. But as a matter of fact I believe that these provisions are wholly inoperative in most parts of the mofussil where the holdings are small, the people poor, and the debts comparatively trifling. The chief point of land being made saleable lies in the efficacy of the threat.

While offering the above suggestions as to the form into which the proposals might be thrown, I do not wish to be at all understood as approving them as being necessary, opportune or expedient. I think that the present law should remain substantially unchanged as regards its execution provisions until we have further experience of its working. It impossible now to calculate on the effects of even the limited changes proposed; and it would be in my opinion a great pity to unsettle people's minds any more at present. I would ask Government not to come to any final decision in the direction of recommending an alteration of the existing law until my next annual report is sent in. I hope to be able to submit it in the month of April.

I enclose a note (in original) received only this day from Mr. Ranade on the subject of your letter, from which you will see that he also deprecates any immediate change in the execution provisions of the Act, though he favours the idea of instalments being made recoverable through the Collectors.

Apologizing for the length of this letter, which I hope may be added to the collection of correspondence to which you allude.

Demi-official Note from Mr. M. G. RANADE, dated 30th January 1884, to Dr. A. D. POLLEN. No. 193.

As desired in your letter of the 24th instant, I submit herewith a few remarks upon the subject referred to in the Honourable Mr. Gonne's letter to your address, of which, as also of his printed note on the Committee's Report, you sent me a copy for my perusal.

I have always been of opinion that, as a permanent measure, the exemption of land from attachment and sale in respect of unsecured debts could not be justified on principle. The members of the Committee were unanimous on this point, though they were equally divided as to whether it was advisable to remove the exemption at once by a change in the law, or that more time should be allowed for further experience of the working of the Act. It now appears from the printed note and the letter that the Government is of opinion that the law in this respect has gone too far in denying to creditors effectual help, and that it calls for a speedy amendment. It is stated in the note that, as matters stand at present, it may take half a century or more before the debts due to creditors will be paid off. I am of opinion that this apprehension is not well founded. The reports of the Subordinate Judges this year show that, in a considerable number of cases, the rayats are honestly striving to pay off their debts as settled by the Courts or Conciliators. If no bad season intervenes, this tendency to act honestly towards their sawkars will be strengthened in the next few years. Meanwhile as the registration returns show, a stop has been put to the growth of indebtedness. The annual transactions in money bonds and secured loans are nearly 50 per cent. less than they used to be. The law of limitation will also prove of help, so that if we have four or five good seasons like those of the past few years, it may be safely assumed that the load of indebtedness will have been for the most part discharged, and instead of 10 per cent. rayats free from debt, as was the case before the Act, there is no reason why this number should not be 50 per cent. or more. It is not the fact of indebtedness, as the excessive degree of it, which needs a remedy. A rayatwari peasantry, in a country like this, will always be more or less in debt, but there should be a large percentage of solvent rayats. I do not doubt that a few years of constraint and enforced economy will serve as a discipline to form habits of thrift and self-help. Rural society is slow to move, and although the Act has been four years in operation, the leaven of it has hardly yet permeated below the surface. Frequent and sudden changes in such matters unsettle transactions, and as the principle is not disputed, it would be well if further experience for a few years is sought before the protection is removed.

As regards the suggestion that the protection should be denied to those rayats whose debts exceed 25 times the assessment on their lands, I am of opinion that such a principle of

exclusion will be unworkable in actual practice. It might be advantageously followed if the rayats showed a willingness to be declared insolvents. The last four years' experience however has shown that the rayats have an intense dislike to take advantage of such protection, and the creditors themselves do not desire to move the Courts to have their debtors' property sold under the insolvency sections. An inquiry into the debts due to other persons is not possible in a suit or darkhasts filed by a single creditor. This provision will remain therefore inoperative like several parts of the existing law, and will prove of no benefit to the creditors.

In regard to the second suggestion, I am glad to find that the principle of extending the help of the Revenue Agency to collect instalments in execution of decrees has found acceptance with Government. As a question of principle, I have never been able to understand what distinction exists between Civil and Revenue Agency, that Government should place the one less effective for its purpose at the disposal of creditors, and hesitate to guarantee the help of the other, which, under the prevailing Revenue system, is far more effective. Such an extension of help to recover instalments will certainly prove of great use to compensate creditors for the loss of their former power of compulsion. With such agency at hand, there will be no cause for complaint if the prohibition against sale is kept up for a few more years. Even if the prohibition be removed speedily, or in a few years, it will be necessary not to return to the old mechanical procedure. Sale through the Collector should only follow as a consequence of one or more failures to execute the instalment decree through both the Civil and Revenue Agency. Such a check will be a much more effective precautionary test than the one proposed in the letter about the proportion of indebtedness to the assessment. The only difficulty that may arise in carrying this suggestion into effect will be in cases where no instalments have been decreed, and the sum awarded is far more than what the debtor's existing means and assets can meet. Such cases, however, are sufficiently protected by the power to grant instalments after decree. As an additional check the Collector, as executing authority, should have larger powers in the matter of allowing time to the debtors, and arranging for the management of their lands. The ultimate liability to sale would act as a sufficient deterrent, but no sale should take place as a matter of course, unless all other forms of execution are fully tried, and found to be of no help.

No. 1

Reply from Mr. J. R. NAYLOR, dated 1st February 1884.

In reply to your demi-official of 18th ultimo, I understand the questions on which you ask my opinion to be :—

(1) As to the expediency of permitting the sale of an agriculturist's immoveable property, when his aggregate liabilities exceed, say, 25 times the assessment on his land.

(2) As to the desirability of empowering Collectors to realize instalments as land revenue when such instalments are due under decrees and the judgment-debtor fails to pay them at the proper time;

(3) As to the form into which the above two proposals could best be thrown;

(4) As to the possibility of giving effect to these proposals in dealing with the claim of individual creditors.

With regard to (1):

The principle that a debtor should not be compelled to part with his immoveable property so long as he can by retaining it pay off his debts to *all*—not to one or two only—of his creditors within a reasonable time, is to my mind an equitable and just one. This is, in fact, the principle that underlies section 322 and the following sections of the Civil Procedure Code, and it is right enough so long as an efficient machinery is provided for ascertaining speedily all the debtor's liabilities; but the difficulties that would attend this latter process, if the Collector were the officer entrusted with the duty, and many such cases were referred to him would be likely to lead to delay and thus to injustice. On the other hand, it would not be equitable to take only one individual creditor's claim into consideration in determining whether the debtor's land shall be sold or not, nor, where there are several creditors, should the land be sold for the benefit of one only unless it has been specially mortgaged to that one.

Whether 25 times or any other multiple of the assessment of the debtor's land should be the limit of his indebtedness for the purpose of any such provision as that under consideration is, I think, questionable. Rates of assessment vary in different localities, some lands (as inamdar lands) are not assessed at all. The income which a debtor may derive from other sources than his

land also varies considerably. I am inclined, therefore, to think that no hard-and-fast limit should be fixed, but that the debtor's lands should not be sold if there is "reason to believe that all his liabilities can be discharged without" selling it. This is the rule already laid down in section 222 of the Civil Procedure Code for debtors generally. I would extend that rule by adding "within a term of twelve (or twenty, but I would prefer twelve) years."

With regard to (2):

I am opposed on principle to all handing over of the execution of decrees to Collectors. It leads to friction between them and the Civil Courts. The duties connected with execution are, as a rule, very little understood by Collectors and their subordinates, and their knowledge of the Civil Procedure Code and of the principles which are observed in Civil Courts is limited. Collectors have no time to devote to the work and no taste for it. Execution by Collectors means, therefore, execution by their subordinates, *i.e.*, by overworked Mamlatdars and their Karkuns, and the results cannot be beneficial to the parties.

On the other hand, although it must, of course, be admitted that whether the execution of a decree be enforced through the ordinary Civil Courts or the Revenue Department, it is the same strong hand of Government that operates in either case, yet, it is, in my opinion, inexpedient, in the interests of good administration, that the duties of different departments should be thus mixed up. Moreover, however clearly educated men may perceive that there is no practical difference between the enforcement of a debtor's liabilities by the Revenue Department or by the Civil Courts, the Revenue Department, in the eyes of the vast mass of the people, is the instrument of the Executive Department of Government whose acts are not altogether governed by fixed laws, whilst the Civil Courts are known to be tied to prescribed regulations and to have no other function but the administration of justice between party and party. The execution of decrees by the Revenue Department is therefore very likely to bring odium upon the Executive Government, whereas the necessity of yielding to the processes of the Civil Courts is a matter with which, it is well understood, Government have no direct concern.

I voted in the recent committee in favour of Mr. Ranade's proposal that *when both parties to an instalment decree so desire*, the instalments payable under it might be levied by the Collector in addition to the Government assessment of the debtor's land, because I felt that very few debtors would be likely to consent to such a course, and that when they did, they would do so with a full knowledge of what they were doing and for special reasons affecting themselves and there could be no harm done, but I would not support any extension of the proposal.

Admitting that a creditor is not able, as the law stands, to lay hands upon his debtor's crop with as much facility as is desirable, there is nothing to prevent his being provided with the same facility for this purpose through the Civil Courts as it is proposed to give him through the Collectors. I mean that it would be quite possible to enact that if a Court does not think fit to direct the sale of a debtor's land in execution of a decree against him, it may declare that the annual instalment due by him shall be a first charge upon his crop after payment of all Government dues thereupon and may take precautionary and other measures for enforcing this charge. The one advantage which the intervention of the Collector in the execution of decrees has over the direct action of the Civil Courts is that the former is generally free of cost to the parties, whilst the latter is attended with all the usual process-fees and other charges. But this difference may also be readily abolished, for there is no good reason why the Civil Courts should be required to charge for what Collectors do for nothing.

But whether the liability of the crop were enforced by the Collector or by the Civil Courts, some margin would have to be left for the subsistence of the debtor and his family and for seed for the following year; and it seems to me doubtful whether, after such margin had been provided and the Government dues paid, the balance available for the creditor would often be worth all the trouble taken to secure it. Under such a system of hypothecation of the crop the debtor's cultivation would naturally be very careless and slovenly, and the outturn of crop extremely unsatisfactory. Such results continued over a series of years in several directions would have a demoralising effect upon the cultivators and a marked influence upon the agricultural development of the country.

Upon the whole, therefore, I am of opinion that the proposal (2) is not a desirable one, and that the methods of procedure prescribed in section 324 of the Civil Procedure Code are preferable to it.

With regard to (3) :

As the proposals are of an exceptional character and such as are only likely to be adopted for the same areas to which the Deccan Agriculturists' Relief Act is now or may hereafter be extended, the best way of giving them legislative shape would, I think, be to enact them as an amendment of that Act. They would take the place of the provision of that Act which declares that an agriculturist's immoveable property may not be sold in execution.

They could not conveniently be grafted on to the Civil Procedure Code unless it were intended that they might be extended to any part of India, in which case they would come in as additions to, or modifications of, section 320 and the following sections. But as the Deccan Agriculturists' Relief Act is of an entirely special nature, I do not think the Legislative Department of the Government of India would approve of any proposal for absorbing it, or any part of it, in the general Civil Procedure Code.

My general opinion as to the best course of procedure at the present time is that the Deccan Agriculturists' Relief Act be amended (1) by omitting:

Chapter IV.—Insolvency (because it is inoperative and useless) ;

Chapter V.—Village Munsifs (because it has nothing to do with the relief of Deccan agriculturists) ;

Chapter VI.—Conciliation (because this is quite a distinct matter from the special subject of the relief of an indebted peasantry and deserves to be dealt with as a separate measure of general applicability) ;

Chapter VIII.—Village Registration (for reasons already stated in the Committee's report) ;

Chapter IX.—Receipts and Statements of Accounts (because this is a heroic remedy practically inoperative and likely, on account of the legal presumptions that will arise against them, to do agriculturists more harm than good) ;

and (2) by repealing the provision against the sale of land in execution ; the rest of the Act, re-arranged, might then be passed as a general Agriculturists' Relief Act applicable wherever a Local Government thinks fit to extend it.

For Village Munsifs a separate local Act might be passed, if they are really thought to be doing useful work, and for conciliation the Government of India might be asked to pass a general Act, either as an addition to the Code of Civil Procedure, or distinct from it.

As regards insolvency and the liability of immoveable property to sale in execution, I would leave agriculturists to the general provisions of the Civil Procedure Code, as it now stands.

Simultaneously with the abolition of Village Registration, the Indian Registration Act should be amended so as to render the registration of *all* documents affecting immoveable property compulsory either generally, or in such territories or districts as Local Governments may direct.

With regard to (4) :

I have already stated that it would not, in my opinion, be equitable to work special provisions in the interests of individual creditors only. The provisions of section 320 and of the following sections of the Civil Procedure Code are specially designed to enable the Collector to bring all the debtor's liabilities under settlement at once, for any law which allowed one out of several creditors to get the entire benefit of the debtor's property would, of course, work very unfairly.

No. 1

Reply from Mr. T. H. STEWART, *dated 4th February 1884.*

I have to thank you for sending me the papers relating to the amendment of the Deccan Agriculturists' Relief Act which were published when I was on privilege leave. After perusing them I feel in a better position to give my opinion demi-officially on the points raised in your letter of the 18th ultimo.

My own opinion is very strong that the quasi-denial of aid to the creditor in the compulsion of payment of debts is a decided blot in the working of the Act, and as it is in the period following the issue of the decree that the sawkar is brought into most direct conflict with the rayat and is most likely to be overreached by him, the result can scarcely fail to be an almost

hopeless breach between the two classes. The Sawkar, knowing that the Legislature has come to the relief of the rayat unsolicited, might forgive him the disabilities to which he is exposed by the Act and might not be inclined to lay at his door the cutting down of claims and reduction of interest by the Judicial officers of Government, but if opportunity is given to the judgment-debtor to play fast and loose with his creditor after the hard fought decree is obtained, all hope of a legitimate money-lending business being established between the two classes in future must disappear. It is therefore in my opinion most necessary that the law should be amended at an early date, so that a decree may be executable with fair ease and promptness after it has once been issued by the Court.

For some time past one of my chief objections to the Act has been that it makes no distinction as regards the degrees of indebtedness into which the rayats are plunged, or, in other words, that while it properly assists towards freedom and independence those agriculturists who, although involved, are possessed of some stock and can reasonably be expected to stand on their own legs at some future date, it bolsters up a number of rayats who are agriculturists in name indeed, but to whom agriculture is a snare rather than a gain. I am very glad therefore to find that the question of the undesirability of keeping the latter class in the occupancy of their lands by artificial arrangements is likely to be admitted by Government in their reply to the Secretary of State. For to a hopelessly pauperised class such as we have among the cultivators of the Deccan the mere presentation of *tabulæ novæ* will mean nothing unless Government is prepared to take the place of the alienated sawkar in supplying their wants, not only for the purposes of future cultivation but for the very maintenance of themselves, their families and cattle. It is urged that the divorce from their lands of the large number of pauper cultivators would constitute a political danger, but I am satisfied that there is more political danger in keeping on the land a half-starved body of agriculturists constantly looking to Government for help and relief than to permit their gradual dispossession in the ordinary course of land which they are incapable of tilling even with average care and for the improvement of which they cannot be expected to take a single forward step and to compel them to look to labour as a profession instead of, as now, taking it up as a means of eking out a miserable existence. It is this class, now kept on its legs by a Legislative enactment, which brings discredit on the land-revenue policy of Government on the occurrence of every slight agricultural depression, and it is to the continuance of this class on their lands in the face of all economic warnings that we owe slovenly husbandry with it accompanying exhaustion of the soil, a sudden epidemic of pauperism on every occasion of drought or famine and an accession of responsibilities which no civilized Government could undertake to grapple with. As they now exist these rayats are worse off than those who labour regularly for their daily wages, and I cannot think that even as sub-tenants or farm labourers of the much-abused sawkar they would be as badly off as they are now with all the uncertainties and risks of cultivation upon them. I would be the last to argue in favour of any special measure to get rid of these unprofitable occupants of Government land, but I firmly believe that the cry of distress in the Deccan will never cease to be heard until they have quietly fallen out of the ranks of agriculturists and their lands have come into the hands of improving occupants or have become adjuncts to larger holdings.

It appears from your note that, while not disposed to restore the power of imprisoning, Government are of opinion that the desideratum of weeding out unprofitable occupants might be attained by permitting decrees to be executed by attachment and sale of the immoveable property of those judgment-debtors only who are so hopelessly in debt that they should not be continued in the occupancy of their lands by artificial arrangements. I would suggest, however, that if a distinction is to be made with the above object it should not be made as regards the character of the property which may be proceeded against, but in the procedure following the issue of the decree. I would recommend that the immoveable property of all agriculturists equally should be mode liable to attachment and sale in satisfaction of the decree. But I would also recommend that, after decreeing the amount justly due on the claim, the Court should be required to hold a summary enquiry as to the general indebtedness of the judgment-debtor. If the result shows that the debtor is not hopelessly involved (the limit of 25 times the assessment of his land may be taken as the criterion), it should be, as now, at the option of the Court to order the satisfaction of the decree by instalments; but if, on the other hand, it is found that the agriculturist is indebted beyond the limit, it should be obligatory on the Court to decree for the full and immediate satisfaction of the amount found to be due without tormenting the creditor with the farce of instalments which can never be paid out of the outturn of a pauper cultivation. Thus, instead of making a class-distinction with respect

to the kind of property liable to attachment and sale, the end will be attained by a mere regulation of the procedure of the Court, for as a rule the class of agriculturist referred to has nothing but the occupancy of his land against which a decree could be executed.

If some such plan be adopted it will not be necessary to make the Collector an agent for the recovery of overdue instalments in the interest of the creditor. The debtor's immoveable property being liable to attachment and sale, we shall hear less of instalments being neglected and the creditor "laughed at." I have the strongest objection to any dues on account of debts, whether they be those of an Agricultural Bank or of a private individual, being added to the revenue demand to be collected by the officers of Government, as with an ignorant peasantry such dues cannot fail in the course of time to become confused with the dues on the land to the great prejudice of the settlements. I have given my reasons at length in reporting on the scheme for an Agricultural Bank in this Presidency. The great boast of our revenue system has been the one, simple, fixed demand of Government against the rayat, safe-guarded by numerous precautions and collected at convenient seasons.

My acquaintance with the districts affected by the Relief Act has been of considerable duration. As Collector of Ahmednagar in 1878 and 1879 and as Collector of Satara in 1879 to 1881 I had great opportunities of studying the condition and requirements of the rayats, while as Settlement Commissioner since 1881 I have had to propose revised assessments for some of the worst tracts of the Poona and Ahmednagar Districts. It would have given me great satisfaction to have gone through all the points so ably treated in your note, but the ordinary duties of the office are so burdensome that collateral duties can only be very rarely undertaken. I have therefore kept to the questions to which you have specially directed my attention. No. 19

Note by Chief Secretary.

I lately submitted a summary of opinions on the working of the Deccan Agriculturists' Relief Act, and the general view taken by Government may, I think, be stated as that the Act goes too far in its denial to creditors of agriculturists of effectual aid in obtaining payment of their decreed dues, from which, apart from the question of justice to these creditors, two undesirable consequences result (1) pauper cultivators who are hopelessly in debt are continued artificially in the possession of land which would naturally pass into the hands of others more able to cultivate it with advantage, and (2) Government is exposed to a new and indefinite responsibility for supporting these pauper cultivators in bad seasons when they can no longer expect to receive the accustomed aid from the village money-lender.

2. Government then propounded for consideration whether the defect in the Act would be sufficiently remedied by providing—

(1) that the land of an agriculturist should be saleable in execution of a decree for unsecured debt whenever he was found to owe as much as, say, 25 times the assessment, and

(2) that whenever a debt has been made payable by instalments, and the debtor fails to pay an instalment, the assistance of the Revenue Law and Establishment should be given to the creditor for the realization of his instalments as if they were revenue in arrear.

3. I was instructed to invite the observations of Dr. Pollen, Mr. Naylor, and Mr. Stewart on these suggestions, and on the form in which they could best be put. The answers of these gentlemen are now submitted, and Dr. Pollen has also sent up a letter from his Assistant, Mr. Ranade.

4. The two points on which their opinions have been taken may be separately noticed.

5. Dr. Pollen is entirely opposed to any present restoration to creditors of power of execution by sale of land, but Mr. Stewart and Mr. Naylor approve of the proposal in this connection to draw a distinction between those landholders who can be helped out of their difficulties, and those who are hopelessly indebted. All are agreed as to what should be the form of the provision if enacted. Land in the Deccan would be again declared saleable in execution, but the Civil Courts, and Collectors, if employed, would be empowered to postpone and, if possible, avoid the sale, if it appeared that the *total liabilities* of the holder could be discharged by instalments in whatever may be prescribed as a reasonable number of years. Mr. Naylor points out that the principle of such a provision would not be new as it underlies the sections* of the Code of Civil Procedure (322 and following) which provide for the execution of decrees by sale of land through the agency of Collectors.

*A memorandum of the substance of these sections, omitting complications, is appended.

6. But Mr. Ranade remarks that the procedure involved will be simply insolvency procedure, and both debtors and creditors have shown their disinclination to take advantage of insolvency procedure. The amendment of law under discussion would therefore in his opinion remain "inoperative like several parts of the existing law, and would prove of no benefit to the creditors."

7. To form an opinion on this criticism it may be considered what would be the working of the suggested amendment on the assumption that creditors would be willing to give it a trial.

A judgment-creditor would apply to a Civil Court for an order directing the sale of his debtors' land on the ground that his debt has reached 25 times the assessment, or is more than he could be expected to pay by instalments in 20 years, or is shown to be of hopeless amount by any other criterion laid down by law. If the judgment dues of this particular creditor are alone sufficient to establish the prescribed degree of indebtedness, an order for sale of the land would at once be passed, but its proceeds would have to be divided between such creditor, and all other creditors who had previously taken out decrees against the debtor without being able to get them executed. The proceeds could not all be given to the creditor who first moves for the sale under an altered Law. And there might be questions of priority among the creditors.

If the judgment dues of the particular creditor moving for the sale are not sufficient to establish against the debtor the prescribed degree of indebtedness, the Court would have to take cognisance of his indebtedness also to other people. If this cognisance is to extend to all the debtors' debts whether affirmed by judgments or not, the proceeding would not be distinguishable from an enquiry into insolvency, but it might be confined to judgment-debts, the existence of which could be immediately ascertained. The proceeds of the sale would have, as in the case first put, to be divided among all the decree-holders.

8. I do not think that it can be expected that any creditor would get much by enforcing sales under the amendment of law discussed—but its efficiency from the creditors' point of view would depend on whether it enabled him, without too much expense or trouble to himself, to put such pressure on his debtor as would incline him to make efforts for paying his debts. It might, I think, have some effect.

9. The second course suggested for consideration that namely of allowing creditors the aid of the Revenue Law and Establishment in the collection of instalments of judgment-debt does not meet with approval except from Mr. Ranade. It is asked whether it is intended that food for the cultivator and his family, and seed for the next sowing should be set aside out of the crop, as well as the Government assessment before the debt instalment is taken—and it is added that in such case there will seldom be any balance of crop left to provide for the instalment. Also whatever there is must be divided between all the judgment-creditors of the land-holder, and could not equitably be given to the one only, who, after the alteration of the law, is the first to apply for the aid in question.

Again Mr. Naylor and Mr. Stewart represent strongly the impolicy of allowing the Executive Establishment to be used in the collection of private debt, while Mr. Naylor adds that such a course is unnecessary, the Subordinate Judges and their Nazirs, etc., being able to do all that can be done by overworked Mamlatdars and Karkuns and in a better way, and the present difference in the cost to parties of one or the other agency being readily removable by Departmental order.

10. Mr. Ranade, on the other hand, highly approves of the idea of using the agency of the Revenue Department in the collection of instalments. "I have never," he writes, "been able to understand what distinction exists between Civil and Revenue Agency that Government should place the one less effective for its purpose at the disposal of creditors and hestitate to guarantee the help of the other which, under the prevailing Revenue system, is far more effective. Such an extension of help to recover instalments will certainly prove of great use to compensate creditors for the loss of their former power of compulsion—with such agency at hand, there will be no cause for complaint if the prohibition against sale is kept up for a few more years."

11. The following considerations occur to me:—

A provision of law, whereby creditors could get instalments of their decreed dues collected from crops in the same way as if they were arrears of public revenue would involve two exceptions from the ordinary course of justice, (1) the agency of the Revenue instead of the Judicial Officers of Government, and (2) the preference given to the claims of creditors of the person who holds the land in his name, over the claims of these who as sharers, or by family arrangement or in any other way may have some proprietary interest in the crop.

12. The question of agency is one of mere detail important only from the view of public expediency. I confess that I concur with Mr. Stewart and Mr. Naylor in thinking that although in the eyes of educated persons it must be a matter of indifference whether the Executive effects a given object by use of its Revenue or its Judicial Establishment, yet as affecting the imagination of ignorant rayats the choice between the two is a matter of great importance. Nor can I see that the Revenue Establishment can execute the decrees in question in any way more effectually than the Judicial Department. In either case the village officials would be bound to assist, and the only difference would be that in one case they would be put into motion by a Karkun from the Subordinate Judge's Court, and in the other by a Karkun from the Mamlatdar's Kacheri. The reason why the Civil Procedure Code provides for the transfer of execution of decrees by sale of land from the Civil Court to the Collector is because of the courses alternative to sale, such as mortgaging, leasing or managing the land which are open to him as the head of an Executive Department and not to the Civil Court—and also it is supposed by some that the Collector may be able to sell land to better advantage, but these considerations do not affect the question of the agency by which portions of a crop should be appropriated towards payment of debt.

13. The question however of preference given to instalments of decreed debt over other claims on the crop is one not of expediency but of justice. When Government summarily appropriates a portion of a crop in satisfaction of assessment in arrears, it merely takes its own property. It matters not how many people have an interest in the produce of a holding—the Government has a right to take its share before any partition among them takes place. But can it be said that any such privilege belongs, after Government, to the creditors of the person who happens to be recognised as the holder of the land? If other persons, besides him, have a proprietary interest in the produce, why should the whole of it be summarily liable for payment of his debts in particular? I am inclined to think that if the Agricultural Bank project comes before the Legislature, this question will be found a stumbling block in the way of that part of it which comtemplates the collection of debts due to the bank as if they were public Revenue. In paragraph 55 of my last note I suggested that instalment of debt might be collected in that way but only after a general composition settlement in which I supposed that the debtors exact interest in his holding would be ascertained, and the same ascertainment would, I think, be necessary before the instalment could be collected in execution of any single decree.

14. A further opinion of Mr. Ranade should be noticed. It has been mentioned that he does not think that any ratio of indebtedness to assessment should be made the criterion for deciding that land should be sold in execution, and he does not think that land should be sold in execution at all for a few years to come, but when the power of sale is restored, he thinks that it should be made dependent on the failure of debtors to pay decreed instalments after the creditors have received every assistance that Government can give them in this connection.

15. I now beg to submit my opinion on both the questions under consideration taken together. I think that the law should make land in the Deccan again saleable in execution, but before a Civil Court orders a sale it should consider whether the total *decreed* liabilities of the holder can be liquidated by reasonable instalments in 20 years. If it is found that they cannot be so liquidated, an order for sale should at once issue. If it is found that they can be so liquidated, an order for payment by instalments should issue. And afterwards if the debtor should fail to pay any instalment, an order for sale should issue. The Court might be allowed to relax this rule in bad seasons, but otherwise the debtor should be left to his own devices in the matter of meeting the instalments which he will probably more often do by the earnings of himself or of some members of his family than by setting aside a portion of his crop.

16. Such provision might be added to the equitable clauses of the Relief Act, and the whole embodied in the Code of Civil Procedure as applicable by order of the Supreme Government to any part of British India where the condition of the cultivators may require special protection.

17. It could be fitted into the Code with slight alteration of the Code's existing provisions. It is compatible with the execution by Collectors of orders for the sale of land only, whereas under Section 323 of the Code, Clause 2 (*d*), the Collector may postpone the sale during a term of lease or management not exceeding 20 years, he should be debarred from such postponement when the holder has shown inability to meet instalments of decreed debt, unless through lease or management he can provide for the payment of those instalments.

18. Though I do not wish to go over old ground, I cannot refrain from drawing attention to the earnest protest raised by Dr. Pollen against any speedy restoration to creditors of coercive powers over their debtors. Under the existing Law, he writes: "credit has been

restricted within just limits, while "rayats have been made more self-helpful and self-reliant," and he asks whether it is wise to fall back into the mischiefs which led to the passing of the Relief Act, and which are so strongly illustrated in the Report of the Rayats Commission of 1875, and the Revenue Administration Reports of the same period.

Now this is not a correct presentation of the question at issue. No one has proposed to go back to the state of things which prevailed in 1875, and Dr. Pollen ignores (1) the subsequent additions to the Civil Procedure Code * touching the execution of decrees by sale of land, and the exemption from execution process of tools, implements of husbandry, cattle and materials of houses, and (2) the equitable provisions of the Relief Act which it is proposed to leave untouched. Whether these great restrictions on the rayat's credit would not sufficiently correct the former mischiefs, and whether the Relief Act by over-doing the correction is not substituting new mischiefs for old ones, are the true questions to which argument should be addressed.

* *Vide* Sir Richard Temple's appreciation of these additions in Minute published at pages 28—29 of Printed Selection of Records CLVII.

19. What are the "just limits" of a rayat's credit? Restrictions on credit, as it seems to me, might operate (1) by limiting the amount that can be safely lent, and (2) by making it unsafe to lend at all. As cultivators from the necessities of their lives must sometimes borrow, it is clear that restrictions on their credit should operate only in the first of these ways. Restrictions so operating are consistent with loans on moderate interest, and in fact if they prevent people from borrowing more than they can easily pay, their tendency ought to be to reduce interest. Such might be the operation of the equitable clauses of the Relief Act properly worked, but strictly provided that lenders can be certain of the full assistance of the Law in holding borrowers to their limited obligations.

Restrictions which make it unsafe to lend at all necessitate exceptional and exorbitant interest, and when they take the extreme form of the executive provisions of the Relief Act, they make loans impossible except to those who can put some ready-made security within the lender's reach. The great majority of cultivators can now offer only the prospective security of future earnings and crops, and this is ineffectual unless the Law will compel them to fulfil their promises.

20. Dr. Pollen holds that the rayats now, without compulsion, are striving honestly to pay their debts. He wishes Government to postpone any proposals for change of the present Law until the report of its operation during last year (promised in April) has been received Mr. Ranade however notes his appreciation of the state of things that has been reached in this connection. He writes, "The reports of the Subordinate Judges this year show that in a considerable number of cases the rayats are honestly striving to pay off their debts as settled by the Courts or Conciliators. If no bad season intervenes, this tendency to act honestly towards their sawkars will be strengthened in the next few years. But still it is clear that the money-lenders do not think this honesty sufficiently general, and sufficiently to be counted on for them to take the risks of lending without the assistance of the Law. They have ceased to lend unless they can be absolutely sure of repayment. The great mass of cultivators must now in bad times look to Government and not to them for assistance. This, I believe, is the actual situation, and it is for Government to decide whether they will chance the bad times, or make it possible for money-lenders to lend to poor cultivators before the bad times come.

21. Whether such a provision of law as is suggested above in paragraph 15 would prove sufficient for this object is, I think, open to doubt, but it is at least an experiment that might be tried before the power of imprisoning is restored to the creditors of agriculturists in the Deccan.

February 1884.

C. GONNE.

APPENDIX.

Abstract of the principal provisions in the Code of Civil Procedure, which refer to the execution of decrees for debt by sale of immoveable property called land for short. No. 187.

Section 305.

When a Civil Court orders the sale of land in execution, it may give the judgment-debtor time and opportunity for raising the necessary sum himself by mortgaging, leasing, or selling, with the Court's cognisance, any of his land.

Section 320.

Execution of decrees, where sale of land has been ordered, must be transferred to the Collector in any local area, should Government so order.

Section 321.

The Collector may confine his attention to the particular decree sent to him for execution, and (1) give the debtor the opportunity of raising the necessary sum by mortgage, sale or lease of his land, or (2) raise it himself, if he can, in like manner, or (3) sell the land in whole or in part.

Sections 322—322 A, B, C, D.—Section 323.

Or the Collector may make a general enquiry into all the liabilities of the debtor, calling for all previous unexecuted decrees against him, and all claims on the land ordered to be sold. He may refer any disputed points to the Civil Court for settlement. And having thus determined and recorded the total amount of claims, and the property of the debtor available for meeting them, he may at his discretion—

(1) if the amount due cannot be otherwise recovered, sell the land, or

(2) if it can be otherwise recovered with interest, he may mortgage or lease the land with a premium, or

(3) let or manage it himself for a term not exceeding 20 years,

and in such case if at the end of such term the full necessary sum has not been raised, he must give the debtor six weeks' time for raising the balance, failing which he is to sell the land.

Section 324 A.

During the term of management the Collector is to pay from the income of the land the charges of management and Government dues, and remit the balance to the Civil Court which is to apply it to (1) the subsistence of the debtor's family, and of the debtor himself, so far as it thinks necessary, and (2) to rateable payments towards discharge of the debts. The Collector is to render accounts to the Civil Court.

Section 326.

Where the execution of decrees by sale of land has not been ordered to be transferred to the Collector, he may represent to the Civil Court that the sale of any particular land is objectionable, and may be authorized by the Court to adopt any of the alternatives above mentioned.

Extract paragraphs 13 and 14 from the Report of T. H. STEWART, Esq., Survey and Settlement Commissioner,—No. 396, dated 23rd February 1884. No. 19

13. The statistics given in paragraph 20 of the report shows that a very large proportion (77 per cent.) of the land is cultivated by the persons described as occupants in the village records, and that a very small proportion, only 5·7 per cent., is formally sublet. This state of things would at first sight appear to be very satisfactory as indicating that the rayats had largely retained their occupancy rights, but any such inference would be misleading. Nothing is more common than for the names of ruined rayats, the mortgages on whose lands have been foreclosed, to be continued in the Government books and themselves to be continued as rack-rented tenants of the land, until the real owner chooses to have the transfer of the occupancy recorded. And there is no reason to believe that in this tract the transfer of the land to the capitalist, which has been noticed in other reports, is proceeding with less marked strides. It has been alleged that one of the results of the Deccan Agriculturists' Relief Act has been to induce the money-lending class to decline to advance to cultivators on the security of their land and to encourage its out-and-out transfer by deed of sale. A denial has been given to this allegation by officers interested in the Act, but nevertheless the facts quoted by Colonel Laughton and the testimony of competent observers appear to point to its truth. The table in Colonel Laughton's paragraph 26 shows that while cases of mortgage of land have decreased from 231 in 1880-81 to 82 in 1882-83, in the same period the yearly number of sales has increased from 105 to 119. The area sold during the last three years amounts to 4,152 acres, and the steady rate at which land is changing hands may be judged therefrom. There is little doubt that the land is transferred for the most part to capitalists and that the sellers are needy rayats who cannot work the land at a profit. Such transfer in itself cannot be considered as a disadvantage from an economic point of view. If the thriftless and hopelessly

involved cultivator falls out of the ranks of agriculturists and takes his place in the much more suitable character of day-labourer, the result will be a blessing to the land which is exhausted and placed beyond hope of improvement during his unprofitable occupation, and to the Government on whose liberal revenue policy his improvidence periodically bring scandal. But I have strong objections to the end being hastened by any action of the Legislature. The transfer would be accepted as inevitable and would evoke no special discontent if it came round in the ordinary course of things; but if it is brought about by the operation of a law which makes it impossible for a rayat to obtain the money he requires, except at the cost of the total surrender of his occupancy right, the bitterness caused thereby may well prove a source of future danger.

14. There have been so many disturbing influences at work during the past decade in connection with the famine and the working of the Relief Act that it is difficult to compare the condition of the Nagar rayat at the old settlement with that in which he is found to be at the present time. It is stated, in paragraph 23 of the original settlement report, that many of the rayats were "extemely poor." The condition was attributed to their expensive habits of living and to the excessive revenue demands then prevailing, both of which causes combined to swallow up their agricultural profits. The Settlement Officers were powerless to check the improvident habits of the people, but in the matter of the revenue demand the call for reduction was most resolutely met, and a demand which averaged R0-13-0 per acre was at one stroke lowered to an average assessment of R0-8-8 per acre. It would be supposed that this easing of the assessments would have improved the condition of all cultivators alike, but although the industrious and solvent rayat has continued to thrive, and the rates have proved attractive to capitalists, the poorer classes of agriculturists had rifted hopelessly into the hands of the money-lenders up to the time of the passing of the Relief Act. The causes, which contributed to this result, have been carefully sifted by the Deccan Rayats' Commission. The Act has attempted a remedy, but it is doubtful whether some of the measures are not too drastic. It has been successful in ameliorating the present condition of the rayat, but there are difficulties in the future which those most deeply interested in the welfare of the cultivator regard with dread. The character of the fears entertained will best be explained by a quotation from a written communication, lately addressed to me by some of the most public spirited and enlightened citizens of Ahmednagar, four of whom are Conciliators under the Act, as well as capitalist farmers who are gradually forming small "Zamindaris" in the neighbourhood of their town. "The condition of the Deccan rayat," they say, "may be considered to have somewhat improved only in this respect that his debt does not now increase. The sawkars have stopped making him fresh advances. Such reluctance on the part of the sawkars will not cause much harm in ordinary good seasons, but will prove very prejudicial in bad seasons. On occasions like failures of crops, locusts, drought or famine, the rayat will get no help from the sawkar, but will have to look to Government for the maintenance of himself and his family and for keeping alive the small number of cattle remaining in his possession. In such bad seasons the discontented sawkars, it appears, refuse to advance money to the rayats, as by the introduction of the Agriculturists' Relief Act they find their wealth counted in papers obtained from the Kunbis has ceased to increase at the marvellous rates it did before. They, therefore, have stopped all their transactions, unless the rayat agrees to sell his land or house or any other property of which very little is to be found with him." It has been fortunate that, since the introduction of the Act, fairly good seasons have enabled even the poorer cultivators, temporarily relieved from the pressure of ancestral debt, to maintain themselves, and to pay their assessment out of the produce of the land, and there is yet time before the inevitable bad season comes to do much to prevent the utter alienation of the money-lending class, which is looked forward to with apprehension. The feeling is that the property of the rayat is hedged round by so many exemptions that the execution of the decree for the amount adjudged as fair after close investigation of the bond is almost hopeless. If the procedure for the recovery of the creditor's admitted dues could be made more effective, and if the special exemptions in favour of the property of agriculturists were modified, the sting would be taken out of the Act's operation and a legitimate business between the moneyed class and the agriculturists would become possible in future.

Final note by the Chief Secretary. No. 19

I now submit a copy of Dr. Pollen's report* on the working of the Deccan Agriculturists' Relief Act for the year 1883. It is a valuable addition to the record of the late discussion on the subject, because it enables the views that have been expressed one way or the other to be tested, as far as possible, by the statistics of the latest experience.

* Not printed.

2. In my former notes, with copies of which Dr. Pollen has been supplied, I stated the conclusion that the Act appeared to work injustice to money-lenders not as regards the investigation of their claims and the resulting decrees, but as regards their inability to execute decrees in the case of the great body of Deccan cultivators who have no realized property on which hands can be laid, other than their houses, lands, cattle and implements. I did not say that the money-lenders get no satisfaction of their decrees against such debtors, but that they have to rely entirely on the debtor's sense of honour, and self interest, and receive no assistance from the law, with the result that they have ceased generally to lend except to applicants of tangible solvency, while others must henceforward look to Government instead of to them for the assistance which in bad seasons they will inevitably require.

3. Dr. Pollen joins issue on this opinion as to defect in the "execution" provisions of the Act (*vide* his paragraph 28). He considers it to be "based to a great extent on impressions formed from conversations with persons who from habit, associations and self-interest are possibly prejudiced against the Act, and he further considers it to be contradicted by the statistics of last year which show that while it is well known that there is little actual execution of decrees anywhere, there is more effectual execution against agriculturists than against non-agriculturists in the four Deccan Districts, and in the four Deccan Districts than in the rest of the Presidency.

4. As regards the basis of the opinion contested, I would refer to paragraph 10 of Mr. Woodward's report in which he states: "The debtor laughs at the decree. He knows it is innocuous," and to the report of Mr. Scott, Judge of Ahmednagar, in which he states: " It seems clear that now the sawkar is practically prevented from enforcing a decree against an agriculturist; he has only the good faith of his debtor to trust to, etc.," and to the report of Mr. Crowe, Acting Judge of Poona, in which he states that the recovery of the sarkar's reduced claims "is made almost impossible under section 266 of the Civil Procedure Code and sections 21 and 22 of the Agriculturists' Relief Act," and to the report of Mr. Hosking, Senior Assistant Judge of Sholapur, who states that "the amount of money now paid to the judgment-creditors through the Court is now very small compared with the amount paid in former years" in one Court, the amount so paid in 1882 having been less than one-sixth of what was paid in 1875. These are the opinions of responsible officers, and I have relied only on the conversation to which Dr. Pollen alludes for confirmation of their correctness.

5. As regards Dr. Pollen's statistics of the execution of decrees, he shows in his 28th paragraph that of 3,400 darkhasts against agriculturists while 1,950 were wholly infructuous, 807 were disposed of by satisfaction in full, and 642 by satisfaction in part. This is the execution which, he thinks, establishes the sufficiency of the compulsory powers left to the creditors. If, however, the details of this execution are examined as exhibited in Appendix C to Dr. Pollen's report, it will be seen that—

269 decrees were executed by transfer of possession of property, or by partition, and are therefore not in point;

1,058 were executed in some way unspecified which must mean by private arrangement between parties such as passing a new bond, and

172 only were executed by actual process against the debtor's property.

I do not think therefore that these figures disprove the correctness of the opinion that decrees cannot now be executed against the great body of Deccan agriculturists.

6. I would also beg attention to Mr. Ranade's notice of this point in the report which is appended to Dr. Pollen's. He does not say that agriculturists can be compelled to pay their debts under the present law, but that they are much more *ready to pay them* than they appeared to be at first. "I admit," he writes, "that the reports of the previous years were not so favourable, and I was myself not prepared to find such evidence of a healthy desire on the part of the agriculturist to act honestly toward their creditors." This is a very different thing from obligation to pay irrespective of desire, and nothing appears to have been shown except that last year after another good season the agriculturists were for the most part in the humour to pay their debts.

7. The real test of the sufficiency of the law of execution is the readiness or otherwise of the sawkar to lend more money. Fortunately, as Dr. Pollen points out, the system of compulsory village registration, whatever its faults, enables notice to be taken of the "rise and fall in the money transactions between the agriculturist and the money-lender." There can be no comparisons between these transactions before and after the

passing of the Relief Act when the registration of all bonds became compulsory, and in the first operation of the Act the returns were obscured by the registration of old bonds. There can however be a very accurate comparison of transactions in years commencing with 1882.

In his report for 1882 (paragraph 58) Dr. Pollen showed that in the four Deccan Districts:—

	R
Sales of immoveable property amounted to	8,011
Mortgages amounted to	24,366
Simple money bonds amounted to	41,149
TOTAL	73,526

and he wrote: "Although the total number of transactions is no doubt small considering the agricultural population of the districts, I do not think that there is anything in the registration statistics to excite alarm or anxiety."

In his present report, however, he shows that sales have fallen from 8,011 to 6,942, mortgages from 24,366 to 13,389, and simple money bonds from 41,149 to 16,705. The fall in the number of total transactions is from 73,526 in 1882 to 37,036 in 1883. The transactions registered are of course to a great extent in continuance of former transactions. How far they indicate fresh lending must be a matter of speculation.

8. The explanation of this remarkable falling off may be to a certain extent the increased prosperity of the agriculturists and to a certain extent the new registration system which is so burdensome to the people, but it is impossible to ignore the apprehension that it may also be the diminished credit of the agriculturists, and, as regards the fall in the number of sales, a want of confidence in the Legislature on the part of capitalists.

9. The following quotation from the report of Mr. Stewart, Survey Commissioner, on the revision of assessment in the Ahmednagar District is in point:—

"The character of the fears entertained will best be explained by a quotation from a written communication lately addressed to me by some of the most public-spirited and enlightened citizens of Ahmednagar, four of whom are Conciliators under the Act, as well as capitalist farmers who are gradually forming small 'Zamindaris' in the neighbourhood of their town. 'The condition of the Deccan rayat,' they say, 'may be considered to have somewhat improved only in this respect that his debt does not now increase. The sawkars have stopped making him fresh advances. Such reluctance on the part of the sawkars will not cause much harm in ordinary good seasons, but will prove very prejudicial in bad seasons. On occasions like failures of crops, locusts, drought or famine, the rayat will get no help from the sawkar but will have to look to Government for the maintenance of himself and his family and for keeping alive the small number of cattle remaining in his possession. In such bad seasons the discontented sawkars, it appears, refuse to advance money to the rayats, as by the introduction of the Agriculturists' Relief Act they find their wealth counted in papers obtained from the Kunbis has ceased to increase at the marvellous rate it did before. They, therefore, have stopped all their transactions, unless the rayat agrees to sell his land or house or any other property of which very little is to be found with him."

But, as above pointed out, sales of immoveable property have fallen off with other transactions.

April 1884.

C. GONNE.

Note by the Acting Chief Secretary. No. 200.

1. Since my duty in the Deccan Riots' Commission in 1875 I have had very little to do with the subject of the rayats' debts and the Relief Act and am therefore in no way committed to opinion in favour of or against the Act except in so far as it follows the suggestions of the Riots' Commission in their report.

2. In the printed Collection of "Reports, Notes," etc., there is a great mass of valuable information and opinion regarding the working of the Act now in force and its results so far as they can be as yet estimated; there is much criticism and some suggestions for alteration of the Statute.

Except, however, in scattered passages, I do not find in this large compilation of criticism and review any distinct indication of what in each writer's opinion should be the aim of the

Legislature in dealing with the questions involved. I think this ought to be clearly understood and determined before those questions are dealt with; perhaps a clearer recognition of what we want to do and what we can do safely, may help to narrow discussion.

3. The existing Act is called The Deccan Agriculturists' Relief Act, but it is only a Relief Act so far as it relieves the agriculturist of some of the consequences of unsuitable laws, the most glaring of which were described by the Honourable Mr. Hope in moving the Bill as "unjust and extortionate claims."

In its main scope and character it is a law providing procedure for enforcing obligations incurred by the Deccan agriculturist, and for securing evidence of his dealings with the sawkar.

It embodies the views of the Legislature as to the manner in which and the degree to which the State should interfere to regulate and enforce contracts of a particular kind.

It was found that the ordinary law and procedure were faulty both in method and in degree, and equity demanded that other methods should be tried and excessive interference curtailed. Equity seemed also further to demand as a condition of State interference that evidence should be procurable by means of receipts, registration, etc.

4. But the methods and limits of State interference are clearly to be determined by expediency rather than any other consideration, and it is therefore needful to have in view, when discussing them, the results which it is wise for the State to aim at.

Borrowing and lending would no doubt go on even if there were no Courts of law, and in the Deccan districts the natural protection to credit is considerable, the rayat who does not pay his debts runs a risk of starving and is sure to suffer hardship, while for the sawkar there is no other, or no other so convenient, investment. This fact is indeed held to be proved by the actual state of things at present; it is alleged that the law as providing for recovery of debt is inoperative, but that credit is not extinguished.

5. The effect of judicial machinery for the recovery of debt is of course to enhance credit. It will enable the honest and solvent rayat who could borrow without it to borrow on cheaper terms, and it will enable those who could not have borrowed without it to obtain loans. It is especially with reference to this last effect of State interference that the limits of judicial action have to be carefully determined on grounds of policy.

6. Besides the natural forces which, as above noted, would in any case create and conserve credit, there are other tendencies, which no law can arrest, but which may be on the one hand accelerated, or on the other hand diverted and obscured by legislative and judicial action.

Foremost among these is the tendency of property to pass from the hands of the poor and improvident to those of the rich and prudent; in a region of increasing population in which the only valuable property is land, held largely by a poor and improvident class, this tendency will inevitably operate. To it is opposed the tenacity with which the rayat clings to his holding, and this may be safely trusted to stimulate him to use every means in his power to retard or avert this transfer.

7. One of the most mischievous effects, in my opinion, of the excessive powers given to the creditor under the ordinary procedure, was that the action of the law obscured and kept out of sight of the rayat the process of denudation which he was undergoing. Giving to the creditor as security all his debtor's property and earnings for an indefinite future, the earnings of his family or his collateral obligee, it enabled the rayat to fool himself with the idea that he still had a property in his land, long after it had passed, for all practical uses of property, into the power of his creditor. It was shown in the Report of the Deccan Riots Commission how the process lowered the morale and sapped the industry of the rayat. If his credit had not been artificially enhanced, if natural forces had been allowed to control his relations with his creditor, there would have, at the proper and a much earlier time, come the day when the latter would have refused accommodation. At this crisis according to the circumstances and character of the debtor he would have either sold his land or some of it, or would have made such efforts to save it as would eventually have redeemed his position, with great gain to the public and himself.

8. It appears from the printed record to be the belief of some officers, though the fact is not established, that, under the present Act, the transfer of land is unduly accelerated. That is to say, that rayats whose character and circumstances were such that they might have safely had further credit have had to part with their land through refusal of accommodation.

A priori it is not improbable that in some cases this may have happened: at any rate the statement illustrates the risk incurred by a too restricted power of recovery.

9. On the one hand then we see that excessive powers of recovery, by undue enhancement of credit, will aggravate the hardship of natural tendencies; for such additional hardship the State will be directly responsible and will be held to be so by the rayat. On the other hand if the Legislature be too afraid of its responsibilities and deny reasonable aid to agricultural credit, the process so painful to the rayat will be needlessly accelerated. But in this case the rayat, as he cannot associate his calamity with decrees of Court, will not be so much inclined to blame the Sirkar.

10. But beside the operation of natural economic tendencies there is another important element in the relations of agriculture and capital in the Deccan which is constantly dwelt upon as a strong reason for a vigorous judicial action in respect of agricultural debt.

It is universally admitted that a proportion of the rayats always, and in bad seasons a very large proportion "cannot get on without borrowing." To borrow the words of the Chief Secretary in his note of February 1894 "as cultivators from the necessities of their lives must sometimes borrow, it is clear that restrictions on their credit should operate only by limiting the amount that can be safely lent them—not by making it unsafe to lend at all." Of course the actual power of a borrower to repay is quite as important an element in 'safety' as the legal powers of the creditor to recover, and it is admitted that there are a good many rayats into whose dealings with the sawkars the risk of having to go to the Courts does not enter; but, however this may be, it must be the duty of the State to give *some* legal protection to the credit of the Deccan rayat.

11. We come back to the question—By what methods and to what degree should the State interfere to enforce payment of agricultural debt in the Deccan? As the practical question before Government concerns the working of the Relief Act we may add 'With what conditions'?

12. The chief condition in the present Act is that of Registration. The main object of this provision was, by minimizing chances of fraud, securing publicity, etc., to get good evidence of each transaction. The machinery first tried, *viz.*, that of the village accountant, was held to have failed. It is stated that the machinery substituted has increased inconveniences previously existing by making it necessary for executants to go long distances.

In the paper headed 'Final note by the Chief Secretary,' paragraphs 24—35, the subject is dealt with, and in paragraph 37 it is stated of the present Registration system that "it must discourage people from using the convenience of written securities."

Now I do not attempt to offer any suggestions for improving the present Registration machinery, but I can hardly suppose that some of the inconveniences noted could not be easily remedied, and as long as the petty transactions of the rayat and his shopkeeper continue to be largely represented by "written securities," I think it would be unwise to dispense with some form of registration. If, as anticipated by the Chief Secretary, the necessity for registration tends to discourage people from using written securities, I should consider this to be an advantage. I believe that the practice of demanding a bond at every fresh stage of dealing arose from the encouragement given by the former procedure to this method of business, the legal presumption then being that a bond was good evidence and the onus of proving the negative lying on the debtor. Now that the Court "goes behind" the bond and the creditor has to show accounts, I should hope that the traditional custom of demanding bonds, instead of suing on accounts, will gradually fall into disfavour. If village sawkars continue constantly to reduce every transaction whether in goods or money to the form of a bond for cash, I would not relieve them of necessity for registration. If the working of the law is to be watched, I do not see how we can do without the information which this provision furnishes us with.

13. As to the methods of State interference, I see that there is a general consensus that since crops have been ruled to be immoveable property, the Relief Act has failed in an important particular of its executive provisions, and there can, I think, be no question that this must be remedied. The limitations placed upon execution in the Act make it exceptionally necessary that all authorized processes should be thoroughly effective.

In the case of execution against crops I would certainly advocate the employment of the village officers as in Revenue processes. There would be claims and interventions by sharers in many cases, but the actual attachment would in most cases, I think, bring the debtor to book and procure deposit of security for license to remove the crop. The intervention of claimants

would not be so embarrassing as in the case of land, which I see it is proposed to make again liable, as the claims would be of so very much less value and decisions would not in any way affect permanent rights.

14. Another point under the head of "methods" is discussed in this record, *viz.*, the appointment of Sub-Judges as conciliators about which the Secretary of State made special reference. I fully concur in the conclusion arrived at in the Chief Secretary's "Final note," page 5. I had the honour when in England in 1879 to hand a note to Mr. Pedder at his request which, I believe, was brought on record, in which I strongly advocated the initial conciliation by the Sub-Judge, and Mr. West's suggestions on the point seem particularly well adapted to make this method of settlement successful.

15. But by far the most important question on which it seems to me that a clear decision should be arrived at is that of the *degree* to which the State should interfere to enforce payment of debt in the district under the Relief Act, and, I may add, in others under the same social conditions.

I suppose it will be admitted that the State should interfere as little as is consistent with the public advantage in the private affairs of the subject. This principle throws, so to speak, the *onus probandi* upon the Legislature to justify every measure entailing coercion. Public experience no doubt demands ready and powerful safeguards for the protection of commercial credit, but the criterion of expedience in the case of the Deccan rayat is far removed from that by which the State would be guided in dealing with the transactions of trade and commerce.

16. To ascertain the degree of interference which would be expedient in his case we may first ask what is desirable in satisfaction of equity.

Unfortunately this question is in the present case complicated by the fact that the State has already interfered and has created new equities by the action of its laws. Bare equity demands that legislation should not introduce any new *risks into the elements of existing* contracts, but new risks were added to the debtor's side under the former law and procedure, and new risks have been added to the creditor's side by the substitution of the Relief Act for the previous law. As regards debts contracted previously to these changes in the law, equity cannot be satisfied. Moreover there can be no doubt that the decision making standing crops immoveable property introduced a risk unforeseen by creditors under the Relief Act. There is nothing to interfere with the full satisfaction of equity in this matter by amendment of the law. When this has been done, then I do not see that we are any further concerned with equity; I do not think that the sawkar can point out any other risk which he could not foresee. The Act may not have been independently of this unexpected exemption of crops, as efficient in its operation for recovery of debt as it was intended to be, but I think it would be difficult to maintain that the money-lenders trusted too rashly to its efficiency in all particulars. They are proverbially cautious and no doubt waited to gain experience. As we cannot remedy the hardships caused by the two changes in the law since 1859, we should dismiss them from our minds in dealing with the law that is to govern present and future transactions, the permanent law for all debt, old or new.

17. It may be taken for granted that it is for the public good that a man should be made to fulfil his obligations. I do not say "pay his debts," that may be a moral *obligation*, but there are a good many cases in which it would not be for the public good *that full* payment of debt should be exacted.

In the ordinary case of a Deccan rayat executing a bond for cash what he does and what the sawkar fully understands him to intend to do, is this :—He discounts for cash or seed or some other present value a portion of his future income. Of course it would be more scientifically correct to say that the sawkar sells him the use of the money or commodity at the price of the interest, but the transaction, as an exchange of existing and future values, may be fairly stated as above. I think that all the State ought to do in such cases is to make the rayat give delivery of what he has sold, as far as may be cheaply done. It is proposed that the rayat's land should again be made liable for debts of this nature; but, if the State can make him give what was really intended to be given, equity does not demand such a degree of interference.

18. Nor do I think it would be expedient on other grounds. It offends against the principle of the "minimum of interference," by practically compelling the rayat to give, and the sawkar to take, the land in security for all accommodation. Why should we take this responsibility?

Should we not again bring about the artificial and most mischievious result of the former law, the rayat drawing against the enhanced credit which the liability of his land would give him, and all the time fancying that he was forestalling interest and not spending principal?

I would certainly leave it to the parties to decide whether the land should be security. If the sawkar requires it, the rayat must either give it by sale or mortgage, or must go without the money, or must work harder and spend less to raise it. These natural conditions may seem hard to the rayat, but at any rate their action is healthy and he has no cause of complaint against the Government or any one else; whereas if we compel the sawkar to take the land in security, we may be sure that he will lend and many rayats will borrow to the full value, and when the land goes they will be justified in holding us responsible.

19. I think that the advocates of this enhancement of the creditor's powers and the rayat's credit have been led to think it necessary by their conclusions regarding the inefficiency of the existing law and the strain which would arise in bad seasons. They hold it proved that credit is at such a low point for want of legal support that in the inevitable bad seasons the rayats would get no loans.

This may be freely admitted as regards the lowest stratum of the cultivating class. Regarding this class the Chief Secretary writes in his note of February 1884 that the Relief Act goes too far in denying to creditors effectual aid in obtaining payment with the undesirable result that "pauper cultivators hopelessly in debt are continued artificially in the possession of land which would naturally pass into the hands of others more able to cultivate it with advantage," and that "Government is exposed to a new and indefinite responsibility for supporting these paupers in bad seasons, when they can no longer expect to receive the accustomed aid from the village money-lender." It seems to me that our responsibility will be exactly doubled in the case of these men if we cause their land to be sold rather than leave it for them to sell when the bad year comes and they can get no credit. Our responsibility is measured in direct proportion as we *interfere to compel payment*; I do not say that the maintenance of pauper cultivators on their land is desirable, but I think we should be wise to leave the severance to nature.

20. The effect of bad seasons is easily exaggerated; as noted by the Chief Secretary in paragraph 47 of his "Final note" the poorer cultivators are all also labourers and for many years to come it is not likely that the Deccan labourer and his family will be unable to find employment. With the great strides we are making in communications and irrigation and the increase of capital that must follow, it is most probable that demand for labour will steadily increase. I have seen a Deccan village with every house in it locked up except those of the village officers, the whole population having gone to work at a distance. This is much better than that they should live at home idle, eating their future crops or their capital. If the demand for employment exceed the supply, there will be such a state of things as to justify famine works. The next stratum above the pauper class would no doubt also have a hard time in bad seasons, but they too would have to work more than usual, and they would have capital enough to eke out their credit in most cases. If, as is assumed in the record, that part of the rayat's income which formerly went to the sawkar has for four years past remained to a considerable extent in his own hands, there must be an appreciable accumulation in vessels, dairy cattle, ornaments, etc., by this time among the middling class.

21. Another extension of the powers, proposed to be placed by the State at the service of the creditor, is that of imprisonment. There is much to be said for the use of this process to compel surrender of property under decree, and make execution effective. It is always a penalty, but used in this way it acts as a punishment for contempt of Court so to speak, as the prisoner may always free himself by surrender of goods; but I still hold to the opinion expressed by the Deccan Riots, Commission that for this purpose it ought not to be required in the case of the Deccan rayat. It is a form of "interference" which, I think, requires strong reasons to justify it. Even if its abuse is carefully guarded against, it can hardly fail to make the creditor less careful and to give a sense of hardship to the debtor. He would begin again to think that the Sirkar was against him.

22. If it were proposed to use imprisonment only in cases of clear delinquency already committed, I would urge that such cases ought to be, and almost always could be, brought under the Criminal law as offences against public justice (perjury, evading legal process, etc.) Just as attempts to use the Criminal law against "cheating" for enforcement of Civil obligations, so frequently made by creditors, have to be carefully guarded against, so, I would urge should Civil Courts keep to the province properly belonging to them and leave the Magistrate to deal with cases which are really offences against the Crown.

23. The conclusion which the foregoing cursory review of the subject points, is that the present Act satisfies the requirements of equity and good policy in the degree to which it carries State interference and that, effective means of execution against the rayat's crops having been provided, any further enhancement of stringency in the provisions for recovery of debt would be likely to lead to mischief and almost certainly to dissatisfaction. I quite admit that we must not be guided by what the rayat may think or feel ir a good case for legislation is made; but the sawkar can at least see his immediate interest and make himself heard, while the rayat is inarticulate and his discontent all the more serious for that reason.

24. The Act has moreover hardly yet had time to show what its permanent effect will be. Some very excellent results have followed the extinction of speculative and artificial credit business, and the relations of rayat and sawkar are nearer the ideal state in which both sides recognize that honesty is the best policy, and act accordingly.

The inevitable bad seasons must come and nature will be hard upon the rayat but will be on the side of the capitalist. I should much fear that any attempt we might make to help the rayat in the struggle would turn out to be help given to the side which would already be the stronger.

23rd May 1884. J. B. RICHEY.

From J. F. FINLAY, Esq., Officiating Under Secretary to the Government of India, Department of Finance and Commerce, to the Secretary to the Government of Bombay, Judicial Department,—No. 3240, dated Simla, the 4th September 1884. No

I am directed to acknowledge the reciept of your letter No. 4850, dated 7th July 1884 addressed to Home Department, forwarding copy of papers on the subject of the working of the Deccan Agriculturists' Relief Act, 1879.

2. It is recommended that three-fourths of the court-fee may, in the first instance, be remittted in all suits brought before the Subordinate Judges as Conciliators in twelve talukas named in margin, in the district of Poona, Ahmednagar, Sholapur, Satara.

Taluka.	Districts.
Khed	Poona.
Akola	Ahmednagar
Parner	Ahmednagar
Sangamner	Ahmednagar
Jamkhed	Ahmednagar
Karjat	Ahmednagar
Sangola	Sholapur.
Malsiras	Sholapur.
Patan	Satara.
Khanapur	Satara.
Man	Satara.
Jaoli	Satara.

3. In reply, I am to state that the Governor General in Council authorises the refund of one-half, of the institution fee in all suits brought in the courts above described in which the court pronounces judgement under Section 152 of the Civil Proceedure Code, *i.e.*, in cases in which at the first hearing it appears that the parties are not at issue on any question of law or fact.

From the Right Honourable the EARL OF KIMBERLEY, K.G. Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the Governor in Council, Bombay,—No. 4 (Judicial), dated India Office, London, the 6th November 1884. No.

Paragraph 1. I have perused with much interest your letter, Judicial,* No. 9 of 24th June last, and its accompaniments, replying to Lord Hartington's Despatch of 26th January 1882, on the subject of the working of the Deccan Agriculturists' Relief Act, 1879, and proposing certain changes in that enactment.

2. Upon careful consideration of the report of Mr. Woodward and of the other valuable reports and opinions which are appended to your letter, I think it is established that the Relief Act has, on the whole, proved beneficial to the agricultural classes of the districts in which it is in force. And I am glad to find that, after the searching examination to which you have submitted the question, your Excellency has arrived at the same conclusion.

3. It is shown that cultivation has extended in area since the Act became law; that it has not fallen off in quality; that the revenue is realized as punctually as ever; that it has ordinarily been paid from the produce of the land, not by borrowing or by the sacrifice of agricultural stock; and that in those tracts which have suffered at once from short harvests and from low prices, the people have struggled against the difficulties of the seasons at least as successfully as they did before the Act was passed. It is the opinion also of officers who possess intimate knowledge both of the working of the law and of the condition of the people that the moral effect of the Act has been good; that it has encouraged thrift, prudence, and mutual help. Finally, it is confidently stated that the opinion of the ryots themselves is alto-

* Printed on page 363.

gether in favour of the Act; that they have never been more contented than at present; that the people of localities in the vicinity of the four districts desire to be brought under the operation of the Act; and that natives of experience believe that in another ten years the Act will effect a striking improvement in the material condition of the agricultural classes.

4. It appears to me also that some points which have been urged against the Act, in regard to its effect upon the prosperity of the cultivators, are really arguments in its favour. The diminution of loan transactions shown by the decrease of money bonds and mortgages is not an undesirable effect of the Act. I do not consider it a misfortune that insolvent ryots (that is, I presume, those who can give no adequate security) can no longer obtain loans. Such persons ought not to be able to borrow, and could not do so except on a kind of security defined by Mr. Richey as the pledge of their property and earnings for an indefinite future, which it is contrary to public policy that they should be able to offer. And it seems to me satisfactory that while there has been no great difference in the total number of sales of land since the passing of the Act, the proportion of sales from one agriculturist to another has increased. For although there is danger in an extensive transfer of ownership to the non-agricultural classes, it has never been thought desirable to check its transfer from unsuccessful to successful cultivators.

5. The opinion that the Act will break down as soon as a famine or general scarcity occurs is a speculation, the accuracy of which has fortunately not yet been tested by experience on a large scale. But it is not supported by the examples, cited in the accompaniments to your letter, of those talukas in Satara and Ahmednagar which during the past few years have suffered from bad harvests. And the assumption that in time of famine the ryots are generally supported by the sawkars is questionable. On the contrary, I imagine that on the approach of scarcity the sawkars are disposed to contract their advances, and to call in the outstanding debts due to them.

6. The question of the effect of the Act on the position of the money-lenders is more doubtful. On this point I would observe that this class must of necessity have been to some extent injured, since the very object of the Act was to relieve the agriculturists from the disadvantages under which they laboured in their dealings with the sawkars. At the same time it is imperative that the money-lenders should be treated with justice as regards the recovery of debts. And the difficulty of dealing equitably between debtor and creditor is especially great in the case of liabilities contracted before the Act came into force.

7. Your Excellency considers that in respect of the decrees passed on their claims creditors have little to complain of. They obtain a decree in full in about 33 per cent. of cases, in part in about 55 per cent., while their claim is totally rejected in about 12 per cent. The average reduction of claims is about 33 per cent., an abatement which you think moderate, and less than might have been expected. As regards the disposal of suits, therefore, it appears to me clear that while the ryot defendant can now confidently expect success so far as he has a real defence, the sawkar plaintiff has not to fear a denial of justice.

8. But the point on which your Excellency is of opinion that creditors have real cause for complaint is that of the execution of decrees and agreements. And you observe that it was contemplated by the framers of the Act that a claim ascertained to be just should be promptly and effectually enforced. It appears that over 57 per cent. of executions against agriculturists under the Act are wholly without result in obtaining payment of the creditors' demands. Dr. Pollen indeed points out that 64 per cent. of all execution proceedings in the ordinary Courts are wholly without benefit to the creditor, from which he argues that the judgment-creditor is rather better off, as regards the realization of his claim, with the Act than without it. But your Honourable Colleague, Mr. Melvill, shows that this conclusion is not trustworthy.

9. At present it appears that—

(*a*) Clothes, implements of husbandry, cattle, and houses of agriculturists are exempt from attachment and sale, under section 266 of the General Civil Procedure Code.

(*b*) Immoveable property (which has been interpreted to include standing crops, though this does not appear to have been the intention of the framers of the Act) is, unless specifically mortgaged, exempt under section 22 of the Relief Act.

(*c*) Under the Relief Act (section 21) no agriculturist can be imprisoned in execution of a decree for money.

In these circumstances, it is not surprising that decrees can seldom be executed by attachment and sale of property, since a debtor has usually parted with all property that he may have had beyond that which is protected before his creditor finds it necessary to sue him. You observe, therefore, that practically the decree which a creditor can obtain is of little use to him, since he cannot execute it, and to remove this defect in the present law, you propose changes in it of a very serious character. You would (*a*) permit the sale in execution of the land, cattle, and agricultural implements of an agriculturist whose judgment-debts exceed 25 times his assessment, (*b*) declare standing crops not to be exempt from attachment, (*c*) permit the imprisonment of a judgment-debtor who has either failed to pay decreed instalments or has not made such payments as the Court may think he should have made in satisfaction of the decree.

10. In the first place, I must observe that five years is but a short time in which to judge of such a measure as the Deccan Agriculturists' Relief Act; that it is obvious from the very nature of such an experiment that its permanent effect cannot yet be ascertained; and that it is not desirable to re-open, by fresh legislation, the question of the principles on which it is founded, especially when on the whole the results are thus far satisfactory.

11. But there are also, it appears to me, serious objections to some of your proposals. It cannot be desirable that, as regards the clothes, cattle, and implements of a cultivator, the Relief Act should cancel, in the four districts alone, a protection which is given everywhere in India by the Code of Civil Procedure. Even were it advisable, which I doubt, so far to modify one of the principles of the Relief Act as to allow of the sale of land in execution, it seems to me that the particular provision which you propose is likely to work grave injustice, especially in the case of a ryot who has incurred debt for the permanent improvement of his land, and has thus raised its real annual value much beyond the amount of its assessment. And although a fraudulent debtor should be punished, I cannot think it either absolutely just on consonant with the spirit of the Relief Act, that a person in the position of a Deccan ryot should be imprisoned merely for failure in the punctual payment of decreed instalments.

12. On the other hand, it certainly appears desirable to bring the law as regards the attachment of standing crops, which, it is justly observed, are usually the legitimate security for an advance for the purposes of cultivation, into accordance with the intentions of the framers of the Act, and I should not object to the introduction of a short Bill for this purpose. Care should, however, be taken that the lien of the revenue on the crop is maintained.

13. There is another suggestion for the assistance of judgment-creditors which apparently does not require legislation. It has been repeatedly pointed out by the Honourable Mr. Hope that the provisions of the Act relating to the management by the Collector of a judgment-debtor's land have remained a dead letter. I can quite understand that such management, in the ordinary sense, is usually impracticable. But it has been proposed by two experienced Assistant Collectors, Mr. Lee-Warner and Mr. Jopp, that the Collector should deal with the land of a judgment-debtor in the same way as he deals with alienated *watan* property, that is to say, should levy its full rental from the judgment-debtor, who would still cultivate and maintain himself and his family from it and should pay the difference between the full rent and the assessment, which, I learn from other papers, is usually *considerable*, into Court, for the benefit of the decree-holder. The creditor would thus receive, during the period for which the arrangement might be in force, as much as he would do were he placed in possession of the land, since he could not draw from it under any circumstances more than its full rent less assessment. This suggestion deserves your Excellency's consideration.

14. There remains, I think, only two points in your Excellency's letter which it is needful to refer to. Paragraph 7, Question 2, I concur in your decision regarding a modification of the conciliation system, which is, indeed, in the direction of the view which commended itself to my predecessors. As regards registration (paragraph 7, Question 3), I am not convinced that it is desirable to rescind the provision which makes the registration of money bonds compulsory. And it appears to me that, while the registration of the more important documents which affect immoveable property should be carried out in the regular registration offices, it ought to be possible to provide a Registrar in each village, or small group of adjacent villages, sufficiently reliable to be entrusted with the registration of the less important simple money bonds, and thus to prevent the hardship of the registration of petty transactions requiring a long and troublesome journey.

G. I. C. P. O.—No. 327 H. D.—1-3-97.—530.—W. B. G.